

CARE & SUPPORT ALLIANCE

The Care & Support Alliance

Response to the Statutory guidance of the Care Act 2014

Section 4 Market Shaping and commissioning of adult care and support, questions 7 and 8

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Overview

The Care & Support Alliance (CSA) are pleased that some concerns have been addressed in the guidance, namely that the importance of sufficiency of provision is articulated, that support should be appropriate to people's individual needs, and that there should be a commitment to data collection. We also recognise that some specific issues raised such as 15 minute visits have been addressed satisfactorily and this is very welcome.

We take note of the addition of commissioning in the title. Although there were initial concerns about this we feel the approach taken demonstrates the role local authority commissioning has in market shaping. The focus on outcomes and wellbeing is welcomed and we are pleased to see a strong focus on workforce development and remuneration.

We remain concerned that there is inconsistency in the approach to the needs of carers. Throughout the guidance the words "and carers" need adding at any point where the guidance is intended to cover carers as well as those with care and support needs. Additionally we feel that the importance of thinking about health/integration and palliative care is important and should be included. Advocacy, sufficient to meet the needs of those going through a transition assessment, should be included for young people as well as adults.

Question 7. Does the statutory guidance provide a framework to support local authorities and their partners to take new approaches to commissioning and shaping their local market?

Statutory guidance

4.1 We are pleased that the guidance is positive about service providers and the role of local authorities in commissioning as well as the need for local authorities to be

active in the wider market. This emphasis on a partnership approach will be essential for local authorities to be able to shape their local market.

4.3 We agree with the requirement for local authorities to review the way they commission services, at present commissioning practice is varied.

Definitions

The distinction between commissioning and procurement is good and it is helpful that there is clarity. We are concerned that local authorities don't currently have the skills for effective market shaping and some resource will be needed here.

4.6 We feel that information and advice should not be used as an example but should be seen as a duty. We are pleased to see the inclusion of third sector providers and grant funding suggestions.

4.7 We note the description of commissioning practice developing as a result of personalisation; ensuring that more support is sufficient and appropriate. We are concerned, however, that this is used to describe developing practices. We would want to see it being an essential consideration for local authorities that support is sufficient and appropriate.

Principles of market-shaping and commissioning

Focussing on outcomes

4.13 We note the requirement for local authorities to consider the Adult Social Care Outcomes Framework (ASCOF) and Think Local Act Personal (TLAP) "I" Statements, but are concerned that these are overlaid on locally agreed frameworks and other outcomes initiatives. Care needs to be taken that there does not become a plethora of different measures with uncertainty about which is paramount. We would also want to see the relationship with CQC standards explored here.

4.14 We support the requirement for local authorities to consider emerging best practice on outcomes-based commissioning. It may be helpful for there to be some signposting here to current sources of best practice.

4.16 We are pleased to see stated that the voluntary sector and smaller providers should not be excluded by a process of payment for outcomes. We feel that more information is required about what 'incorporating elements of "payments-for-outcomes" mechanisms' might look like and how these elements might be incorporated. For example, would there be bonuses and would there be fines if outcomes are not delivered. Although it states there will be a link to examples it is unhelpful that at this stage it is unclear what is being proposed.

4.17 We agree with the emphasis on local authorities' community capacity building role.

Promoting quality

4.19 We are pleased to see the inclusion of the CQC fundamental standards in the consideration of quality by local authorities.

4.21 The CSA is particularly pleased to see appropriateness underlined and described as an essential component of quality.

4.23 The CSA is pleased that there is recognition of fluctuating needs. It would be helpful for local authorities to have an example here of a person with a fluctuating condition, not only young people and those in transition.

4.25 Whilst it is good to see that local authorities must consider how to support the workforce some indication of how this should be achieved would be welcome.

4.27 We agree that there should be an assurance that staff are remunerated to retain an effective workforce but believe the word '**should**' needs to be replaced with '**must**'. We support the use of italics for 'at least' minimum wage as this suggests that this is a low baseline and may not be sufficient to meet the objective. We feel, however, that there is a missed opportunity here to set the policy intention that remuneration should be at the living wage. Paragraph 4.25 talks about fostering and enhancing the workforce and paragraph 4.30 talks about ensuring there are appropriate and high quality providers and it is difficult to see how this will be achieved without paying staff a 'living wage'.

4.28 This paragraph should refer to promoting well-being not only about how well-being can be undermined. This is particularly important as well-being is a fundamental principle of the Care Act. We feel that this paragraph should also refer to retention of staff as high turnover is associated with lower quality services.

Supporting sustainability

Data collection will be vital to the ability to plan future needs for support. It would be good to strengthen the guidance around data collection particularly for complex or rare conditions such as neurological conditions or Parkinson's. The assessment is a key time to collect this information, but unless it is recorded in a way that allows searching and collation this won't help. It would also be useful to reference existing data sets in the health sector which could help with this.

A toolkit on data sources would be useful. Including sources such as CQC, HSCIC, local health watch, complaints data, emergency admissions data. It also needs to include data on carers – possible sources being GPs, NHS and the census.

4.31 The CSA wanted to see some stronger guidance regarding data collection but appreciate that local authorities are encouraged to be active in planning and assessing future markets.

4.32 We agree that it is outlined that local authorities should not undermine the market by their own commissioning decisions. This section also needs to cover re-tendering of services as well as commissioning new services. We propose an amendment to read; 'Local authorities should not undertake any actions which may threaten the **sustainability of the pool of providers who are able to deliver services of the appropriate quality** – for example, setting standard fees below..'. We are concerned that if 'the market as a whole' is considered it would take a lot to threaten sustainability as there will be poor quality providers operating at low cost.

4.33 The CSA has been strongly of the view that a local authority should step in to ensure continuity of care and support for people in the event of provider failure and we are pleased that the word must is in bold in this clause.

Ensuring choice

There is a need to ensure that there are sufficient support services for personalisation, including care planning support, brokerage and support to manage direct payments. This also needs to include sufficient brokerage services for self funders.

4.35 As already stated we are pleased with the emphasis on diversity in the market and for there to be a range of providers and types of provision.

4.39 The CSA has been particularly concerned that there should be sufficient provision to meet the needs of people in an area and therefore welcomes this clause.

4.41 We are not clear what 'traditional' services means and don't feel that this is a helpful term. It is important that people's right to make choices is recognised in all services and that people are able to receive support that is personalised.

4.43 We are positive about the robust requirement to support people's choices and access to information and advice. We feel this is diminished by the way in which support and advice is used as an example in 4.6.

4.44 This paragraph needs to emphasise the importance of sufficiency of support, which is included in the Act.

Co-production with stakeholders

We are pleased to see that there is a section that specifies the incorporation of co-production with stakeholders.

4.46 The CSA suggests that the order of stakeholders should be different here with people with care and support needs, not providers, as the first in the list.

4.49 as 4.46 above

Engaging with providers and local communities

4.57 as above

4.58 We are supportive about the way in which this paragraph is written to emphasise the needs of assessing and building community capacity. We are particularly pleased to see bullet point 5 – about keeping individuals in the tendering process, as this is something that often does not take place at present.

4.61 This paragraph could be better worded to sound less defensive. It seems contradictory to the partnership approach that has just been outlined.

Understanding the market

4.62 We propose the following amendment; ‘Local Authorities **must** make available to providers available routes to register concerns or complaints about engagement and commissioning activities, **and make clear there will be no adverse consequences. Local authorities should investigate concerns and complaints**’. At present there is not an adequate route – judicially reviewing decisions is costly and takes time – which means concerns and complaints about commissioning activities are often not addressed and poor practice can continue.

In the spirit of transparency we also suggest that local authorities should publish reasons behind decisions in the tendering process. This would build trust. The reasons behind decisions should reflect the LAs direction of travel and policy intent set out in the Market Position Statement or equivalent.

4.64 Whilst we welcome the outline for data collection in this paragraph we are concerned that it does not go far enough to ensure that local authorities are able to have a comprehensive assessment of local populations and their potential needs.

4.67 The wording of this paragraph is problematic. The way in which carers are described does not feel appropriate and it is unclear what sort of ‘trends’ are being referred to.

4.68 We agree that the assessment of needs should be across the board, no matter whether people are receiving funding or are state funded. This will be particularly important in the process of ‘metering’ individual’s progress towards the cap.

4.70 This sits uneasily with the caution outlined in 4.61.

Facilitating the development of the market

4.74 The CSA agrees that data should be published and there should be transparency. We are pleased to see this inclusion.

4.75 We believe Market Position Statements will go some way towards ensuring that information and consideration about the market will set the scene in which a diverse

market can flourish. We are pleased to see the inclusion of housing in this paragraph.

4.76 We agree that a Market Position Statement is a good first step in market shaping but it won't achieve on its own what is required.

4.77 It would be helpful to explain what is meant by 'an open-book accounting' approach. Would this be providers sharing their accounts with the LA, providers sharing their accounts with the local authority and other providers or would it also involve the LA showing providers its accounts? It is difficult to see how 'open-book accounting' approach would work in current competitive tendering processes.

4.79 It would be useful for this paragraph to link back to 4.6 which talks about incentivising innovation by third sector providers, possibly through grant funding. Or to add grant funding to this section.

A case study would also be useful here, especially one around meeting specialist or low incidence need.

4.80 We are pleased to see the addition of housing in this paragraph. We propose the following amendment; as well as reducing the length of stay in hospitals, add, **'and stopping people reaching crisis and needing to go into hospital in the first place'**. This would be in line with the prevention agenda.

4.82 We suggest a good practice case study here, post-Winterbourne, where a local area has integrated commissioning and a pooled budget and developed the right support and services locally.

4.84 The Care and Support Alliance has been concerned at the impact on people who use care and support of the actions of some local authorities' in managing the market and are therefore support his clause.

4.85 We welcome the challenge on local authorities as regards commissioning as well as the inclusion of the word 'appropriate' in describing quality services.

4.86 The CSA is concerned that procurement practice can, for example, exclude people who use care and support from the process and therefore reduce choice and control. This paragraph is therefore very welcome.

4.88 The CSA has been concerned at 15 minute visits and feels that the wording here is appropriate to deal with this issue whilst recognising that there may be occasions where a 15 minute visit is appropriate. This paragraph is very welcome.

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

We would suggest the guidance to risk stratification used by NHS England (<http://www.england.nhs.uk/wp-content/uploads/2014/02/ig-risk-ccg-gp-2.pdf>) namely:

- analysing the health of a population (“risk stratification for commissioning”); and
- targeting additional preventive care interventions, such as the support of a community matron, to high-risk patients (“risk stratification for case finding”).

We also suggest the following could be included somewhere in statutory guidance/practice guidance/tools:

Raising our sights guide: Commissioning for people with profound and multiple learning disabilities (Mencap and the PMLD Network guide, commissioned by the Department of Health):

<http://www.mencap.org.uk/sites/default/files/documents/Raising-our-sights-Commissioning%20guide.pdf>