LOCAL AUTHORITIES DUTIES TO ADULTS WITH LEARNING DISABILITIES

Introduction
The system concerning the eligibility for social care has been subject to scrutiny. The previous guidance: Fair Access to Care Services [FACS] was issued in 2003 and had become out of date and unworkable, raising new questions and issues than it resolved.

Many local authorities had raised their eligibility criteria to such an extent that many who were in need of resources were deemed ineligible. The system was complicated and did not safeguard those in need for any length of time.

That has now been replaced. New guidelines have now been issued by the Department of Health relating to the eligibility for social care and provides guidance on eligibility criteria for adult social care. It came into effect in April 2010.

It seeks to support fairness, transparency and consistency in the application and receipt of care nationwide. It sees to avoid a postcode lottery and simplify the system. It hopes to reiterate good practice and the obligations upon local authorities to conduct assessments of need both appropriately and thoroughly. It urges local authorities to seek to implement a preventative measure rather than attempt to cure a more complicated issue further down the line.

The new guidelines reassert to local authorities their responsibilities, duties and obligations under statutes, statutory instruments and guidelines. It goes on to describe the duties owed towards “adults in need,” the manner in which local authorities should assess the level of need and provide services to meet it.
It seeks to reflect the increased focus on “personalisation”, i.e. giving an individual greater choice about how they receive support and personal control over resources. It hopes to prevent vulnerable people needing social care for as long as possible.
I The Council's Responsibilities

• Setting the eligibility criteria

In general councils may provide community care services to individual adults with needs arising from physical, sensory, learning or cognitive disabilities or from mental health needs:
- 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

They also have the power to provide services to carers under the Carers and Disabled Children Act 2002.

The guidance sets out an eligibility framework, designed for Councils to use to set their own eligibility criteria. In setting it, they must of course bear in mind their resources, local expectations, local costs, agreements with the NGS and other agencies combined with local and national factors.
Consultation should be made with service users, carers, and appropriate local agencies and organisations about their eligibility criteria and how information is presented and made available. Having said that, the final decision rests with the council.
The criteria when drawn up should be made readily available and accessible to service users, carers, and the public generally.

• Entitlement to assessment
Under section 47 NHS and Community Care Act 1990 local authorities have a duty to assess the needs of any person for whom the authority may provide or arrange the provision of community care services and who may be in need of such services.

They do have the power to assess and assist those not within their area and their duty to assess is therefore not restricted to someone ordinarily resident within their area.

The local authority is required to assess people who are about to be discharged from hospital and may need community care services.
A person who may be in need of services refers to a person who may be in need at the time or who may be about to be in need. i.e. a patient waiting for hostel accommodation.

- **Awareness of hidden or fluctuating conditions**
  Such groups include:
  - those with specific communication needs
  - blind or partially sighted people
  - people with autism shoes support needs may not be as immediately apparent or easily understood as other groups.

People with autism have previously been refused assessment because their IQ is too high. This is not acceptable.
Many deaf/blind people are not known to local authorities and they ought to be alive to this issue.

- **Before the community assessment**
  Councils must not exempt anyone who approaches or is referred to them for help from the process to determine eligibility for social care, regardless of their age, circumstance, apparent financial means or the nature of their needs.

They should avoid using the criteria as a way of restricting the number of people receiving services to those with the very highest needs. Rather, they should
concentrate on adopting a strong preventative approach to help avoiding rising levels of need and costs at a later stage. Prevention rather than cure.

They should consider whether an individual may benefit from a short period of re-ablement or immediate care to increase what they are able to do for themselves before an assessment of long term need is undertaken.

They may provide immediate care and support in emergencies and crises. At this stage they should advise the individuals that a more detailed assessment will follow which may alter the level of care and/or support provided.

From the outset, as much information as possible must be conveyed to the individual.

- **The community care assessment**

An appropriate community care assessment must be carried out assessing the short term and long term needs prior to a decision being made regarding their eligibility for support.

Councils have a duty under the Community Care Assessment Directions 2004 to consult with the person being assessed (and their carers where appropriate) to take all reasonable steps to reach agreement with the person about the kind of support to be provided.

The assessment should be interactive and ongoing rather than a one off event. The depth and breadth should be appropriate to the individual circumstances

Agencies should work together to ensure that information from assessment and related activities is shared among professionals in order to avoid duplication of assessment

- **After the community care assessment: support to eligible persons**
The NHS and Community Care Act 1990 requires that having conducted the assessment councils must decide whether the persons needs call for the provision by it of any community services. Once they have decided it is necessary to meet the eligible needs, it is under a duty to provide sufficient support to meet those needs. Such support should be provided promptly once they have agreed to do so but where waiting is unavoidable they should ensure that alternative support is available in the short term to meet the identifiable needs.

An assessment of the means of an individual and their ability to pay or contribute to the costs should only take place after the assessment. This is so that it doesn’t affect the level and detail of the assessment.

That assessment of the ability to pay should also be made promptly and information about the charges and their calculation should be provided.

Once eligible needs have been identified, a support plan can then be put together with the collaboration of the individual describing what support they will draw on to overcome barriers to independence.

All discussions around choices must be accurately recorded in writing to ensure the council, the individual and carers are clear about any potential consequences and how the risk can be managed.

A written record of the support plan should be agreed with the individual:
- A note of the eligible needs identified
- Agreed outcomes and how support will be organised
- A risk assessment including any action to manage those identified
- Contingency plans
- And financial contribution
- Support carers and others are willing and able to provide
- Support to be provided
- A review date

There must be regular reviews of the support plan. Written records of those reviews should be kept. The frequency is proportionate to the circumstances of the individual.
There should be an initial review after 3 months. Further reviews should occur at least annually.

The plans should focus on what people are able to achieve with the right help rather than simply putting things in place to preserve the status quo and prevent things getting worse.

When an individual moves to another council area the new council should take into account the decisions of the former and the effect on the individual on changing any element.

- **Assisting individuals not eligible for social care support**

If an individual’s needs do not meet the eligibility criteria for support the council should be satisfied that the person’s needs are not going to significantly worsen or increase in the future due to a lack of support and thereby compromise independence and well-being.

Where they do not offer direct help following assessment they should put reasons in writing to the individual and make written records available. They should be told they should return for re-assessment if their circumstances change.
II Assessment of carers

A carer who provides or intends to provide substantial care on a regular basis has a right to have their needs assessed by the local authority independent of the needs of the person they provide care to (Carers (Recognition and Services) Act 1995)

Two purposes:
- To consider the sustainability of the caring role
- Whether or not the carer works or wishes to work and whether they are undertaking or wish to undertake education, training, leisure activity and the impact of their caring role on their commitments and aspirations. “It is essential that councils take account of the cumulative effects of responsibilities on family members within the household”

Council after assessment must then assess whether the carer requires services.

Parents of disabled children can request an assessment if the local authority is satisfied the disabled child and their family are persons for whom it may provide or arrange the provision of services under section 17 Children Act 1989 or the Carers and Disabled Children Act 2000

Where it is identified the well being of a carer is at risk, that person should be offered an assessment
III  Young people with social care needs

Councils should have in place arrangements to ensure that young people with social care needs have every opportunity to lead as independent a life as possible and that they are not disadvantaged by moving from children’s to adult services.

The move to adult health and social care with different entitlement criteria very often seen the withdrawal of specialist services often essential to the young person’s quality of life.

Transition planning requires a coordinated multi agency approach. In particular directors of adult social services should work in partnership with directors of children social services to carry out joint appraisals of local arrangements, commissioning strategies and the outcomes for young disabled people and their families.

Successful transition depends on early and effective planning, putting the person at the centre of the process.
IV Duties under other statutes and guidelines

- The council must ensure that the core principles of the Mental Capacity Act 2005 are followed carefully during assessment, support planning and should refer to the Mental Capacity Code of Practice [2007] in so doing.
- They should consider whether Independent Mental Capacity Advocates and other advocates such as dementia advocates or learning disability advocates may be appropriate to ensure the people involved play a role in the decision making process as far as possible.

- The Race Relations Act 1976
- Disability Discrimination Act
- Sex Discrimination Act
- Councils should ensure that relevant staff from the local authority and partner agencies are aware of the Practice Guide to Carers (Equal Opportunities) Act 2004 published by the Social Care Institute for Excellence
- The Human Rights Act 1998