

Lancashire County Council

Executive Scrutiny Committee

Tuesday, 8th March, 2016 at 2.00 pm in Cabinet Room 'C' - The Duke of Lancaster Room, County Hall, Preston

Agenda

Part I (Open to Press and Public)

No. Item

1. Apologies

2. Disclosure of Pecuniary and Non-Pecuniary Interests

Members are asked to consider any Pecuniary or Non-pecuniary Interests they may have to disclose to the meeting in relation to matters under consideration on the Agenda.

3. Minutes of the meeting held on 19 February 2016 (Pages 1 - 2)

4. Forthcoming Individual Cabinet Member Key Decisions

(a) Implementation of the Care Act 2014 - Review of Adult Social Care Policies and Procedures (Pages 3 - 102)

(b) Approval of Direct Payments Policy (Pages 103 - 130)

(c) Approval to Amend Adopted Route for the Penwortham Bypass (Pages 131 - 138)

(d) The Future of Blaze - Young People and Culture Project (Pages 139 - 144)

(e) The Provision of Additional Secondary School Places in Chorley (Pages 145 - 150)

5. Urgent Business

An item of urgent business may only be considered under this heading where, by reason of special circumstances to be recorded in the Minutes, the Chair of the meeting is of the opinion that the item should be considered at the meeting as a matter of urgency. Wherever possible, the Chief Executive should be given advance warning of any Member's intention to raise a matter under this heading.

6. Date of Next Meeting

The next meeting of the Executive Scrutiny Committee will be held on Tuesday, 12 April 2016 at 2pm at the County Hall, Preston

7. Exclusion of Press and Public

The Committee is asked to consider whether, under Section 100A(4) of the Local Government Act, 1972, it considers that the public should be excluded from the meeting during consideration of the following items of business on the grounds that there would be a likely disclosure of exempt information as defined in the appropriate paragraph of Part 1 of Schedule 12A to the Local Government Act, 1972, as indicated against the heading to the item.

Part II (Not Open to Press and Public)

8. Forthcoming Individual Cabinet Member Key Decisions

(a) Direct Payment Support Service Award of Contract (Pages 151 - 156)

(Not for publication- Exempt information as defined in Paragraph 3 of Part 1 of Schedule 12A to the Local Government Act, 1972. It is considered that in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the information).

(b) Repairs & Maintenance Framework (Pages 157 - 164)

(Not for publication- Exempt information as defined in Paragraph 3 of Part 1 of Schedule 12A to the Local Government Act, 1972. It is considered that in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the information).

(c) Supply of a Growth Hub Gateway Service (Pages 165 - 168)

(Not for publication- Exempt information as defined in Paragraph 3 of Part 1 of Schedule 12A to the Local Government Act, 1972. It is considered that in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the information).

(d) Supply of Active Lives and Healthy Weight Service for Adults (aged 18 and over), families, children and young people (aged 4-18) across Lancashire (Pages 169 - 236)

(Not for publication- Exempt information as defined in Paragraph 3 of Part 1 of Schedule 12A to the Local Government Act, 1972. It is considered that in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the information).

I Young
Director of Governance,
Finance and Public Services

County Hall
Preston

Lancashire County Council

Executive Scrutiny Committee

Minutes of the Meeting held on Friday, 19th February, 2016 at 2.00 pm in Cabinet Room 'C' - The Duke of Lancaster Room, County Hall, Preston

Present:

County Councillor Bill Winlow (Chair)

County Councillors

A Atkinson	M Green
Mrs S Charles	C Henig
B Dawson	J Oakes
G Dowding	N Penney
G Driver	J Shedwick
K Ellard	

1. Apologies

Apologies were received from County Councillor A Barnes.

County Councillors C Henig, K Ellard and J Shedwick replaced County Councillors D Clifford, S Holgate and D O'Toole respectively at this meeting.

2. Disclosure of Pecuniary and Non-pecuniary Interests

County Councillors A Atkinson, D Borrow and J Oakes declared a non-pecuniary interest in agenda item 4a (Proposed waste processing requirements and specification for services delivered by Global Renewables Lancashire Operations Limited) as they were Company directors.

3. Minutes of the meeting held on 2 February 2016

Resolved: That the Minutes of the meeting held on 2 February 2016 be confirmed and signed by the Chair.

4. Forthcoming Individual Cabinet Member Key Decisions

The Committee considered the following report on a key decision due to be taken by an individual cabinet member.

- a. **Proposed waste processing requirements and specification for services delivered by Global Renewables Lancashire Operations Limited**

The Committee considered a report on proposed waste processing requirements and specification for services delivered by Global Renewables Lancashire Operations Limited (GRLOL).

It was reported that following the County Council's decision in November 2015 to adopt a number of policies in relation to the processing of waste through its waste recovery parks at Farington and Thornton, the waste management service had reviewed options and made recommendations in relation to the delivery of these policies. Members were informed that the proposals would result in significant changes to the waste processing operations conducted at the waste recovery parks, and reductions in the services provided to the County Council by GRLOL. However, the proposed changes would not impact on the County Council's ability to process recyclables or compost garden waste collected from households.

It was noted that the service changes would provide the lowest cost, lowest risk operation to the County Council which it was considered could be delivered within the prescribed revenue budget; delivering a revenue saving of £8.5m per annum on current operations. It was also noted that early delivery of the service changes was likely to save £5m - £8m of allocated transitional reserve over the financial years 2016-17 and 2017-18.

The nature of the proposed service changes was that there would be the requirement for GRLOL to significantly transform the Company resulting in excess of 250 job losses.

Resolved: That the recommendations set out in the report to the Cabinet Member for Environment, Planning and Cultural Services be noted, and that no additional comments or alternative recommendations be made.

5. Urgent Business

None.

6. Date of Next Meeting

It was noted that the next meeting would be held on Tuesday 8 March 2016 at 2.00 p.m at County Hall, Preston.

I Young
Director of Governance, Finance
and Public Services

County Hall
Preston

Report to the Cabinet Member for Adult and Community Services
Report submitted by: Director of Adult Services
Date: 8 March 2016

Part I

Electoral Division affected:
All

Implementation of the Care Act – Approval of revised Adult Social Care Policies and Procedures incorporating the Wellbeing Principle, Eligibility, Ordinary Residence and Independent Advocacy

(Appendices 'A', 'B', 'C', 'D', 'E' and 'F' refers)

Contact for further information:
Heather Bryan, 01772 535633, Programme & Project Management,
heather.bryan@lancashire.gov.uk

Executive Summary

The Care Act 2014 modernises and consolidates legislation on adult social care in England into one statute and has been described as the biggest change to adult social care law in 60 years. This legislation has changed the financial, legal, commissioning and operational landscape for councils, their workforces, for citizens, social care providers and partners.

The County Council's adult social care policies, procedures and practice guidance documentation forms part of an essential operating framework for those working with adults who have social care needs. The requirement to maintain and improve this framework is essential to the professional and high quality delivery of assessment, supports information and advice to our customers and to ensure legal compliance.

A comprehensive review of the County Council's adult social care policies, procedures and practice guidance has therefore been undertaken and key policy documents have been identified for review and revision as part of a phased programme.

This report sets out the impact and benefits from undertaking this review and clarifies the need to subject all new adult social care policies, procedures and practice guidance to robust governance arrangements.

This is deemed to be a Key Decision and the provisions of Standing Order 25 have been complied with.

Recommendation

The Cabinet Member for Adult and Community Services is recommended to:

- (i) approve the following revised Adult Social Care Policies:
 - a. Wellbeing Principle (Appendix 'C')
 - b. Eligibility (Appendix 'D')
 - c. Ordinary Residence (Appendix 'E')
 - d. Independent Advocacy (Appendix 'F')
- (ii) agree that any fundamental changes or new policies should be presented to the Cabinet Member for approval and to authorise the Director of Adult Services, in consultation with the Director of Governance, Finance and Public Services, to approve all other future revisions of adult social care policies.

Background and Advice

1) Introduction:

Many of the major provisions affecting social care policy and practice came into effect on 1st April 2015 and includes areas such as assessment, eligibility, safeguarding, independent advocacy, support planning and review, market shaping and provider failure.

The Care Act clarifies the duties placed on local authorities, many of which are new, and in response, it is essential that the County Council's policy framework for adult social care is reviewed and where necessary revised and redrafted to ensure compliance. It is also important that the adult social care policies, procedures and practice guidance echo the vision, values and priorities within the County Council's Corporate Strategy with particular focus on support, prevention, intervention and protection of the most vulnerable members of our society.

This has already occurred in regard to several adult social care policies approved earlier this year including Lancashire's Deferred Payment Scheme, Lancashire's Safeguarding Policy and the policy for Undertaking Assessments and Providing Support for Carers in Lancashire.

The County Council's adult social care policies, procedures and practice guidance documentation forms part of an essential operating framework for those working with adults who have social care needs. At a time when change is prevalent across the County Council, customers and stakeholders are seeking accurate information and the delivery of services through a consistent and equitable approach that is legally compliant. The needs and expectations of our customers will of course also remain firmly at the heart of everything we do.

In addition, the County Council has recently revised the Resource Allocation System and it is crucial that the County Council's policies and procedures are clearly

explained and published to support the review activity that will occur over the next two years.

It is also worthy of note, that by 2017 the County Council is required to have plans in place with regard to greater integration of Social Care with Health, to be implemented by 2020. It will be important that both current arrangements and any new plans in respect of the integration of operational services, such as Social Work, Therapy Services etc. ensure that practice remains compliant with the approved policy framework and therefore the Care Act. Clearly there are aspirations to bring closer together the Health and Social Care system to ensure both legal and policy compliance and financial sustainability for the medium to long term given the challenges that both sectors are facing.

Given the accelerated rate at which Local Government funding is being reduced, meeting our minimum statutory duties will increasingly need to become the realistic aim in regard to both funding of services and their delivery. The adult social care policies, procedure and practice guidance will therefore need to align to this position.

2) New arrangements:

To support the development and effectiveness of the County Council's adult social care policies, procedures and practice guidance, work has been undertaken to frame an agreed definition of terms and these are attached at Appendix 'A'.

Working in partnership with other local authorities has enabled the County Council to develop a revised and more concise framework that incorporates the policies, procedures and practice guidance essential to deliver effective services. This new framework ensures that the County Council is legally compliant with the Care Act and other relevant legislation such as the Mental Capacity Act. The new framework is attached at Appendix 'B'.

Governance arrangements will be formally established following the conclusion of this review to ensure that all future revisions and/or new policy documents will be legally compliant, informed by practice and robust in the event of challenge. It is recommended that future revisions will be subject to final approval from the Director of Adult Services following operational and legal clearance, in consultation with the Director of Governance, Finance and Public Services.

Fundamental changes or new policies will however follow the full decision making pathway through to Cabinet Member approval.

3) Summary of revised Policies:

Wellbeing (Appendix 'C'):

The wellbeing principle applies equally to those who do not have eligible needs but come into contact with the health and social care agencies in some other way (for example, via an assessment that does not lead to ongoing care and support) as it does to those who go on to receive care and support, and have an ongoing relationship with the local authority.

The principle of wellbeing will inform the commissioning and delivery of universal services which are provided to all people in the local population, as well as being considered when meeting eligible needs.

The Cabinet Member is recommended to refer to Appendix 'C', point 2.1, page 5 as this offers a definition of 'wellbeing' as defined by the Care Act 2014.

Eligibility (Appendix 'D'):

The introduction of a national eligibility threshold provides greater transparency on the threshold of need for eligibility. Improved clarity supports authorities in deciding whether the prior provision of information and advice or preventative services would delay a person from developing needs which meet the eligibility criteria or whether longer-term care and support might be needed. It should also help the person needing care or their carer to think more broadly about what support might be available in the local community or through their support network to meet their needs and support the outcomes they want to achieve.

The Fair Access to Care Services (FACS) framework which was introduced in 2003 has therefore been repealed. However to ensure a smooth transition from old to new legislation with effect from 1st April 2015, individuals deemed eligible under the FACS criteria continue to be eligible until their next statutory review under the Care Act.

County Council's records note that 16,830 people were assessed as eligible for adult social care services following data collected between April and September 2015. This emphasises the need for clear and accurate policies to support practice.

Two case studies have been included within this policy as an aid to understanding the application of the eligibility criteria for Social Care Workers. The Cabinet Member is recommended to refer to Appendix 'D', page 11/13 Case Study 1 and 2.

Ordinary Residence (Appendix 'E'):

The understanding and framework for 'Ordinary residence' is crucial in deciding which local authority is required to meet the needs in respect of adults with care and support needs and carers. Whether the person is 'ordinarily resident' in the area of the local authority is a key test in determining where responsibilities lie between local authorities for the funding and provision of care and support. A local authority is only required to meet needs in respect of an adult who is "ordinarily resident" in their area (or is present there but has no settled residence).

In 2014 the County Council was involved in over 20 challenges to Ordinary Residence decisions. The need to have a clear, transparent and legally compliant policy and procedures is therefore crucial to support the County Council's decision making and its ability to respond effectively to future challenges and complaints.

Independent Advocacy (Appendix 'F'):

The Care Act places a duty on a local authority to arrange an independent advocate for all applicable adults. Local authorities must involve people in decisions made

about them and their care and support or where there is to be a safeguarding enquiry or Safeguarding Adults Review. People should be active partners in the key care and support processes of assessment, care and support and support planning, review and any enquiries in relation to abuse or neglect. No matter how complex a person's needs, local authorities are required to involve people, to help them express their wishes and feelings, to support them to weigh up options, and to make their own decisions.

The County Council currently contracts with four independent advocacy providers and it is essential that they are able to work in line with the County Council's policies and procedures. This new duty has therefore been recognised in a standalone policy specific to Independent Advocacy (Care Act) in acknowledgement of its place in legislation.

The Cabinet Member is recommended to refer to Appendix 'F', page 8 which details the referral process within a clear and easy to use flow chart.

4) Review and revision of Policies, in plan:

The following policies have been determined as high priority for review and revision and will be presented for Cabinet Member approval at a future date:

- a) Needs Assessment
- b) Care and Support Planning
- c) Review of Care and Support Plans

In addition, the Cabinet Member is asked to note that work is currently being undertaken to review the County Council's response plans to Urgent Home Closures as part of its planned approach to provider failure. The County Council has been invited to participate in a joint programme of development with NHS England and the Response Plan and Policy documentation will be presented for approval following the completion of this project.

It is proposed that these documents will be presented for Cabinet Member approval in early 2016.

All remaining policy revisions will be presented as appropriate.

Consultations

Wider public consultation has not been undertaken as the documents in question are not new presentations but rather revisions to ensure they fully represent the new duties and requirements placed on the local authority under the Care Act.

Implications:

This item has the following implications, as indicated:

Workforce

The professional response and practice of the workforce in supporting citizens and customers is guided by the County Council's comprehensive range of adult social care policies, procedures and practice guidance. The accuracy and relevance of these documents is therefore essential to support practice and the delivery of high quality supports.

As the revision of documentation has in the main been as a result of new duties under the Care Act, a further process of awareness raising training in regard to the variations will also be undertaken across the social care workforce to ensure that the changes are embedded in practice.

A programme of training is already being delivered across the social care workforce and with key internal and external stakeholders to ensure understanding of legal responsibilities under the Care Act and to embed the new duties into practice. The workforce has been offered a range of awareness and business specific training via manager's briefings, e- learning, face to face training and learning circles. The training programme will continue through to March 2016.

Legal

The Care Act and supporting guidance places a series of new duties and responsibilities on the County Council in regard to the care and support for adults. All revised or new documents have been assessed and approved by legal before being presented to the Cabinet Member for final approval. All documents will be publically accessible as part of this process with the aim of reducing legal challenge or complaints due to lack of understanding or transparency.

Equality and Diversity

The Care Act itself was subject to a wide range of consultation and its provisions were assessed for their equality impact.

Financial

In the lead up to the implementation of the Care Act 2014, a number of new funding allocations were made by Central Government. Whilst some funding was encompassed within the Better Care Fund the remainder was allocated as specific grants. A funding formula was engaged to determine the allocation and acknowledged a number of new areas within the Care Act that would generate increased demand, such as eligibility, social care assessment and support for prisoners etc. The County Council was to receive additional funding of £10.5m in 2015/16 (including a contribution from the Better Care Fund), however the allocation of the specific grant funding is currently under review by Central Government due to the announced delay of phase 2 of the Care Act.

Human Resources

The revisions have no new implications for Human Resources

Risk Management:

The County Council is already operating within the framework of the Care Act. However publishing a clear policy framework supports the County Council. If the recommendations are not taken forward, the County Council will not meet its statutory duties under the Care Act which will result in the County Council being highly exposed to legal challenge and reputational damage.

List of Background Papers

Paper	Date	Contact/Tel
Preparing for Implementation of the Care Act in Lancashire - http://mgintranet/ieDecisionDetails.aspx?ID=5721	10/09/2014	Heather Bryan Health & Care Systems Development 07876844624
Care Act 2014 – http://www.legislation.gov.uk/ukpga/2014/23/pdfs/ukpga_20140023_en.pdf		
Care and Support Statutory Guidance (October 2014) - https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/366104/43380_23902777_Care_Act_Book.pdf		
Implementing the Care Act 2014 - Approval of a new Policy for Safeguarding Adults in Lancashire http://mgintranet/ieDecisionDetails.aspx?ID=6604	01/04/2015	
Implementing the Care Act - Approval of a new Deferred Payment Policy http://mgintranet/ieDecisionDetails.aspx?ID=6289	15/01/2015	
Implementing the Care Act 2014 - Approval of a new Policy for Undertaking Assessments and Providing Support for Carers in Lancashire http://mgintranet/ieDecisionDetails.aspx?ID=6289	15/01/2015	

[ails.aspx?ID=6292](#)

Implementing the Care Act:
Development of a s75
Partnership Agreement with
Lancashire Care Foundation
Trust for meeting the County
Council's responsibilities for
provision of Social Care in
Prisons
[http://mgintranet/ieDecisionDet
ails.aspx?ID=6293](#)

Adult Social Care – use of new
resource Allocation System
[http://mgintranet/ieDecisionDet
ails.aspx?ID=7598](#)

[Implementing the Care Act –
Funding the County Council's
New Responsibilities in
2015/16](#)

Reason for inclusion in Part II, if appropriate

N/A

Lancashire County Council's Policies, Procedures and Guidelines - definitions

What is a policy?

'A Policy is a definitive plan or method of action to guide decisions and action'

Lancashire's adult social care policies are:

- formal documents describing the organisational position on a particular aspect of compliance in regard to legislation, regulations, standards and guidelines
- an official statement and intended to guide and influence both present and future decision making in line with the organisations strategies and philosophy
- a clear statement of intent offering clarity around actions to be taken so reducing the likelihood of misinterpretation
- subject to rigorous review
- mandatory and endorsed by our legal and Human Resources Departments . Failure to comply with a policy may therefore result in disciplinary action
- supported by related standards, procedures and guidelines

What is a procedure?

'A procedure is a step by step description of tasks required to support or carry out organisational policies'

Lancashire's adult social care procedures are:

- an extension of a related policy
- an articulation of the process that is to be used to accomplish a control
- intended to support the delivery of high quality equitable practice
- are endorsed by our legal department

What are guidelines?

'Guidelines are recommendations or instructions that provide a framework for achieving compliance with policies'

Lancashire's adult social care guidelines are:

- general rules, principles or pieces of advice
- intended to advice people on how something should be done
- usually more technical in nature than policies and standards

Care Act Policies Content List

1. General Responsibilities

- Wellbeing Principle
- Information and Advice

2. Prevention

- Occupational Therapy
- Reablement and Rehabilitation
- Adaptations and Equipment
- Telecare

3. Identifying Needs

- Needs Assessment
- Eligibility
- Hospital Discharge
- Ordinary Residence
- Continuing Healthcare (CHC)
- Independent Advocacy – Care Act
- Advocacy – Mental Capacity (IMCA), Mental Health (IMHA) and general advocacy
- Transition from Children's Services to Adult Services
- Prisoners (including s75)
- Continuity of Care

4. Care and Support Planning

- Care and Support Planning
- Protection of Property
- Reviewing Care and Support Plans
- Cross Border Placements
- Choice of Accommodation
- Supporting Self-funding Service Users
- Brokerage

5. Finances

- Personal Budget
- Financial Assessment & Lancashire Council Council's Charging Policy
- Direct Payments
- Deferred Payments

6. Carers

- Carer's Assessment
- Eligibility Criteria for Carer's
- Carer's Budget

7. Adult Safeguarding

- Safeguarding Policy
- Information Sharing, Record Keeping and Confidentiality
- Safeguarding Adults Board/ Reviews

8. Appeals and Complaints

- Appealing an Assessment
- LA's standard complaint's procedure

9. Commissioning and decommissioning

- Procedures to manage the closure of a care home
- Procedures to manage the cessation of trade of a domiciliary agency

Adult Social Care Policies and Procedures

WELLBEING PRINCIPLE

WARNING! Please note if the review date shown below has passed this procedure may no longer be current and you should check the PPG E Library for the most up to date version

Contents

WELLBEING PRINCIPLE	1
POLICY VERSION CONTROL	2
1. POLICY STATEMENT.....	3
2. KEY DEFINITIONS AND PRINCIPLES APPLICABLE TO THIS POLICY	5
2.1 Wellbeing:	5
2.2 Assessment:	5
2.3 Needs:.....	5
3. STATEMENT OF INTENT	6
3.1 Promoting wellbeing in Lancashire	6
3.2 Additional Key Principles and Standards	7
4 FLOW CHARTS / DIAGRAMS OR EXAMPLES.....	9
5 DOCUMENT HISTORY	10

POLICY VERSION CONTROL

POLICY NAME	Wellbeing Principle		
Document Description	This document sets out the Council's broad responsibilities for wellbeing to a specific individual or wider community in Lancashire when undertaking any of its functions relating to the Care Act 2014		
Document Owner 1) Officer, position and contact details			
Document Author	Linda Thomas	Date	29 October 2015
Status (Draft/Live/Withdrawn)	Draft	Version	0.3
Last Review Date		Next Review Due date	
Approved by	Tony Pounder	Position	Director of Adult Services
Signed		Date Approved	

DOCUMENT CHANGE HISTORY			
Version No	Date	Issues by	Reason for change

1. POLICY STATEMENT

The Care Act 2014 introduced the Core Principle that Local authorities **must** promote wellbeing when carrying out any of their care and support functions in respect of a person. This may sometimes be referred to as “the wellbeing principle”.

Although the wellbeing principle applies specifically when the local authority performs an activity or task, or makes a decision, in relation to a person, the principle should also be considered by the local authority when it undertakes broader, strategic functions, such as planning, which are not in relation to one individual. As such, “wellbeing” should be seen as the common theme around which care and support is built at local and national level.

The wellbeing principle applies equally to those who do not have eligible needs but come into contact with the health and social care agencies in some other way (for example, via an assessment that does not lead to ongoing care and support) as it does to those who go on to receive care and support, and have an ongoing relationship with the local authority. It should inform the delivery of universal services for example shopping delivery services, community centre, which are provided to all people in the local population, as well as being considered when meeting eligible needs.

The wellbeing principle applies in all cases where a local authority is carrying out a care and support function, or making a decision, in relation to a person. It applies equally to adults with care and support needs and their carers.

In some specific circumstances, it also applies to children, their carers and to young carers when they are subject to transition assessments.

Neither the principles, nor the requirement to promote wellbeing, require the local authority to undertake any particular action. The steps a local authority should take will depend entirely on the circumstances. The principles as a whole are not intended to specify the activities which should take place. Instead, their purpose is to set common expectations for how local authorities should approach and engage with people.

Therefore to fulfil its duty under section 1 of the Care Act, the Council will apply the 'wellbeing principle', working with its statutory, voluntary and private sector partners, when carrying out a care and support function, or making a decision that is relevant, coherent, timely and sufficient.

The 'principle' will apply to the whole population of Lancashire and not just those with care and support needs or in some other way already known to the system, and delivered in ways that are accessible. Lancashire will make all reasonable

adjustments to ensure that all disabled people have equal access in line with the Equality Act 2010.

The geography and population of Lancashire is diverse and our Adult Social Care Policies and practice will aim to deliver services and supports that are representative of the communities in which we work.

The Council will follow the Care Act and other relevant legislation, policies and guidance to ensure our practice is of high quality and legally compliant. Where our customers or those we come into contact with wish to challenge or raise concerns in regard to our decisions, regarding the 'wellbeing principle' the Council's complaints procedures will be made available and accessible.

2. KEY DEFINITIONS AND PRINCIPLES APPLICABLE TO THIS POLICY

2.1 Wellbeing:

“Wellbeing” is a broad concept, and it is described as relating to the following areas in particular:

- 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

There is no hierarchy, and all should be considered of equal importance when considering “wellbeing” in the round.

2.2 Assessment:

This is one of the key interactions between a local authority and an individual. The process must be person-centred throughout, involving the person and supporting them to have choice and control. It starts from when a local authority begins to collect information about the person, and will be an integral part of the person's journey through the care and support system as their needs change. An assessment **must** seek to establish the total extent of needs **before** the local authority considers the person's eligibility for care and support and what types of care and support can help to meet those needs.

A carer can also have an assessment.

2.3 Needs:

A person's needs are specific to them, these can include help and support required by the individual due to illness, disability, old age that enables them to live more independently. There are many ways in which needs can be met, behind the Care Act is the intention to encourage diversity rather than point to a service or solution that is neither best for nor what the person wants.

3. STATEMENT OF INTENT

When undertaking any care or support functions, the Council workers will ensure they consider an individual's wellbeing and acknowledging that the individual themselves is considered to be best placed to judge their own wellbeing. Therefore the following will be considered when undertaking interactions with any individuals.

3.1 Promoting wellbeing in Lancashire

When undertaking their work Council workers will consider how to promote wellbeing. This will involve actively seeking improvements in the aspects of wellbeing when carrying out a care and support function in relation to an individual, at any stage of the process, from the provision of information and advice to reviewing a care and support plan.

Wellbeing covers the broad range of people's lives and will take account of a wide variety of specific considerations depending on the individual.

The Council can promote a person's wellbeing in many ways. This will be dependent on the circumstances, including the person's needs, goals and wishes, and how these impact on their wellbeing. The Care Act has not set a specific approach, as it advocates that a local authority should consider each case on its own merits, consider what the person wants to achieve, and how the action which the local authority is taking may affect the wellbeing of the individual.

In individual cases, it is likely that some aspects of wellbeing will be more relevant to the person than others. For example, for some people the ability to engage in work or education will be a more important outcome than for others, and in these cases "promoting their wellbeing" effectively may mean taking particular consideration of this aspect. The Council will adopt a flexible approach that allows for a focus on which aspects of wellbeing matter most to the individual concerned.

During the **assessment** process, for instance, the Council will explicitly consider the most relevant aspects of wellbeing to the individual concerned, and assess how their needs impact on them. Taking this approach will allow for the assessment to identify how care and support, or other services or resources in the local community, could help the person to achieve their outcomes.

During care and support planning, when agreeing how needs are to be met, promoting the person's wellbeing may mean making decisions about particular types or locations of care (for instance, to be closer to family).

3.2 Additional Key Principles and Standards

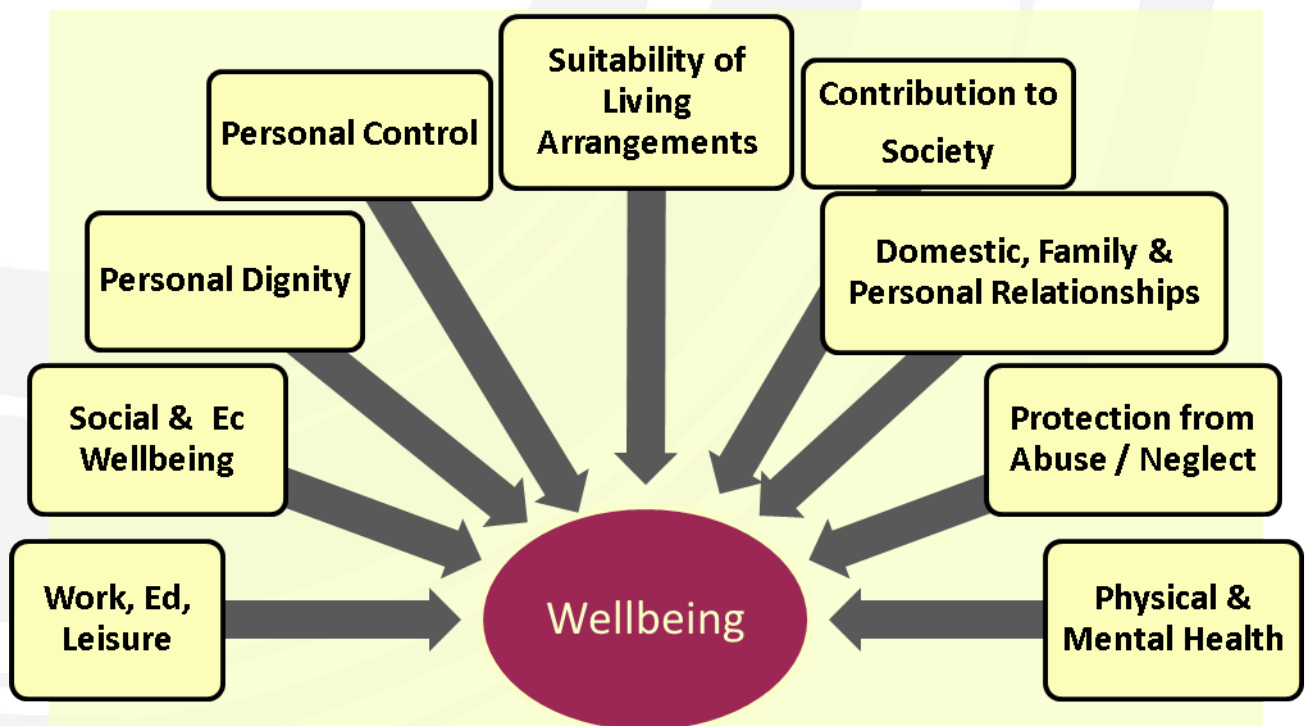
In addition to the general principle of promoting wellbeing, there are a number of other key principles and standards which the Council **must** have regard to when carrying out the same activities or functions:

- a) make the assumption that the individual is best-placed to judge their own wellbeing. Building on the principles of the Mental Capacity Act, the Council will assume that the person themselves knows best their own outcomes, goals and wellbeing. The Council will not make assumptions as to what matters most to the person;
- b) ensure the individual's views, wishes, feelings and beliefs are central. Considering the person's views and wishes is critical to a person-centred system. The Council will not ignore or downplay the importance of a person's own opinions in relation to their life and their care. Where particular views, feelings or beliefs (including religious beliefs) impact on the choices that a person may wish to make about their care, these will be taken into account. This is especially important where a person has expressed views in the past, but no longer has capacity to make decisions themselves;
- c) the importance of preventing or delaying the development of needs for care and support and the importance of reducing needs that already exist. At every interaction with a person, the Council will consider whether or how the person's needs could be reduced or other needs could be delayed from arising. Effective interventions at the right time can stop needs from escalating, and help people maintain their independence for longer;
- d) the need to ensure that decisions are made having regard to all the individual's circumstances (and are not based only on their age or appearance, any condition they have, or any aspect of their behaviour which might lead others to make unjustified assumptions about their wellbeing). The Council will not make judgments based on preconceptions about the person's circumstances, but will in every case work to understand their individual needs and goals;
- e) the importance of the individual participating as fully as possible in decisions about them and being provided with the information and support necessary to enable the individual to participate. Care and support should be personal, and Council workers should not make decisions from which the person is excluded;
- f) the importance of achieving a balance between the individual's wellbeing and that of any friends or relatives who are involved in caring for the individual. People should be considered in the context of their families and support networks, not just as isolated individuals with needs. Council workers should take into account the impact of an individual's need on those who support them, and take steps to help others access information or support;

- g) the need to protect people from abuse and neglect. In any activity which the Council undertakes, it will consider how to ensure that the person is and remains protected from abuse or neglect. This is not confined only to safeguarding issues, but should be a general principle applied in every case;
- h) the need to ensure that any restriction on the individual's rights or freedom of action that is involved in the exercise of the function is kept to the minimum necessary for achieving the purpose for which the function is being exercised. Where the Council has to take actions which restrict rights or freedoms, they will ensure that the course followed is the least restrictive necessary.

Considering these matters should lead to an approach that looks at a person's life in the round, considering their needs in the context of their skills, ambitions, and priorities, as well as the other people in their life and how they can support the person in meeting the outcomes they want to achieve. The focus should be on supporting people to live as independently as possible for as long as possible.

4 FLOW CHARTS / DIAGRAMS OR EXAMPLES



5 DOCUMENT HISTORY

RELATED DOCUMENTS	
OTHER RELATED DOCUMENTS	<ul style="list-style-type: none"> • Needs Assessment Policy • Eligibility Criteria Policy • Independent advocacy Policy • Care and Support Planning Policy • Direct Payments policy • Transitions from Children's Services to Adult Services Policy • Ordinary Residence Policy • Continuity of Care Policy
LEGISLATION OR OTHER STATUTORY REGULATIONS	<ul style="list-style-type: none"> • Care Act Section1 • Chapter 1 Promoting Wellbeing Statutory Guidance • Chapter 3 Information and advice Statutory Guidance • Chapter 5 Managing provider failure Statutory Guidance • Chapter 6 Assessment and eligibility Statutory Guidance • Chapter 7 Independent advocacy Statutory Guidance • Chapter 10 Care and support planning Statutory Guidance • Chapter 12 Direct payments Statutory Guidance • Chapter 13 Review of care and support plans Statutory Guidance • Chapters 14 Safeguarding Statutory Guidance • Chapter 16 Transition to adult care and support Statutory Guidance • Chapter 19 Ordinary residence Statutory Guidance • Chapter 20 Continuity of care Statutory Guidance

Adult Social Care Policies and Procedures

ELIGIBILITY CRITERIA

WARNING! Please note if the review date shown below has passed this procedure may no longer be current and you should check the PPG E Library for the most up to date version

Contents

ELIGIBILITY CRITERIA	1
POLICY VERSION CONTROL	3
1. POLICY STATEMENT.....	4
2. KEY DEFINITIONS AND PRINCIPLES APPLICABLE TO THIS POLICY	5
2.1 Wellbeing:	5
2.2 Assessment:.....	6
2.3 Proportionate:.....	6
2.4 Eligibility outcomes:.....	6
2.5 Fluctuating needs.....	6
3. PROCEDURES.....	7
3.1 Step One.....	7
3.2 Step Two.....	7
3.3 Step Three	9
4. FLOW CHARTS/ DIAGRAMS OR EXAMPLES.....	11
5. DOCUMENT HISTORY	15

POLICY VERSION CONTROL

POLICY NAME	Eligibility Criteria		
Document Description	This document sets out the Council's response to the Care Act 2014 national eligibility criteria, which sets a minimum threshold for adult's care and support and carer support.		
Document Owner 1) Officer, position and contact details			
Document Author	Linda Thomas	Date	29 October 2015
Status (Draft/Live/Withdrawn)	Draft	Version	0.3
Last Review Date		Next Review Due date	
Approved by	Tony Pounder	Position	Director of Adult Services
Signed		Date Approved	

DOCUMENT CHANGE HISTORY			
Version No	Date	Issues by	Reason for change

1. POLICY STATEMENT

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 or of their financial situation.

From April 2015, the Care Act 2014 specified a new national minimum threshold for eligibility (Section 13) for **adults**. The regulations, The Care and Support (Eligibility Criteria) Regulations 2014, set the minimum threshold - *that as a result of the adult's needs the adult is unable to achieve two or more of the specified outcomes*. Local authorities are **not** able to restrict their eligibility beyond this.

Local Authorities however, continue to have discretion (power) to meet other needs that are below the national threshold. Therefore the Local Authority can if it chooses, meet needs it does not consider eligible.

The national eligibility criteria sets a minimum threshold for adult care and support needs which local authorities must meet. All local authorities **must** comply with this national threshold.

The Fair Access to Care Services (FACS) framework which was introduced in 2003 has therefore been repealed. However to ensure a smooth transition from old to new legislation with effect from 1st April 2015, individuals deemed eligible under the FACS criteria continue to be eligible until their next statutory review under the Care Act.

The introduction of a national eligibility threshold provides greater transparency on the threshold of need for eligibility. Improved clarity supports authorities in deciding whether the prior provision of information and advice or preventative services would delay a person from developing needs which meet the eligibility criteria or whether longer-term care and support might be needed. It should also help the person needing care or their carer to think more broadly about what support might be available in the local community or through their support network to meet their needs and support the outcomes they want to achieve.

Establishing whether or not a person has eligible needs is one of the most important decisions under the Care Act. Eligible needs are those which meet the eligibility criteria and which a local authority may be required to meet.

The threshold is based on identifying how an individual's needs affect their ability to achieve relevant desired outcomes, and whether as a consequence this has a significant impact on their wellbeing.

The Care Act has established that carers can be eligible for support in their own right. Therefore there is a separate policy in relation to eligibility for carers.

Therefore to fulfil its duty under section 13 of the Care Act, the Council will, working with its statutory, voluntary and private sector partners, comply with the national threshold relating to care and support that is relevant, coherent, timely and sufficient.

The Council will make all reasonable adjustments to ensure that all disabled people have equal access to participate in the eligibility decision in line with the Equality Act 2010.

The geography and population of Lancashire is diverse and our Adult Social Care Policies and practice will aim to deliver services and supports that are representative of the communities in which we work.

The Council will follow the Care Act and other relevant legislation, policies and guidance to ensure our practice is of high quality and legally compliant. Where our customers or those we come into contact with wish to challenge or raise concerns in regard to our decisions, regarding eligibility the Council's complaints procedures will be made available and accessible.

2. KEY DEFINITIONS AND PRINCIPLES APPLICABLE TO THIS POLICY

2.1 Wellbeing:

“Wellbeing” is a broad concept, and it is described as relating to the following areas in particular:

- 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

There is no hierarchy, and all should be considered of equal importance when considering “wellbeing” in the round.

2.2 Assessment:

This is one of the key interactions between a local authority and an individual. The process must be person-centred throughout, involving the person and supporting them to have choice and control. It starts from when a local authority begins to collect information about the person, and will be an integral part of the person's involvement in the care and support system as their needs change. An assessment **must** seek to establish the total extent of needs **before** the local authority considers the person's eligibility for care and support and what types of care and support can help to meet those needs. A carer can also have an assessment.

2.3 Proportionate:

This means that the assessment is only as intrusive as it needs to be to establish an accurate picture of the needs of the individual or their carer, regardless of whatever method of assessment is used. This will involve:

- both hearing and understanding the initial presenting problem,
- not taking this at 'face value',
- ensuring any underlying needs are also explored and understood,

2.4 Eligibility outcomes:

These are listed within the eligibility regulations. There is a list for adults with care and support needs, which is set out in section 3.2 below. These outcomes set out the minimum criteria that local authorities must consider in order to comply with the new national eligibility threshold for adults needing care and support. These are the outcomes that the eligibility determination should be based on.

2.5 Fluctuating needs:

The condition(s) of an individual at the time of the assessment may not be entirely indicative of their needs more generally. Local authorities must consider whether the individual's current level of need is likely to fluctuate and what their on-going needs for care and support are likely to be. This is the case both for short-term fluctuations, which may be over the course of the day, and longer term changes in the level of the person's needs. In establishing the on-going level of need local authorities must consider the person's care and support history over a suitable period of time, both the frequency and degree of fluctuation. The local authority may also take into account at this point what fluctuations in need can be reasonably expected based on experience of others with a similar condition.

3. PROCEDURES

3.1 Step One

Following a proportionate assessment, an eligibility decision is then required. The first condition that the Council assessors must consider is whether an adult with care and support needs has eligible needs. The Council must consider whether:

- The adult's needs arise from or are related to a physical or mental impairment or illness.
- As a result of the adult's needs the adult is unable to achieve **two or more** of the specified outcomes (which are described in 3.2 Step Two).
- As a consequence of being unable to achieve these outcomes there is, or there is likely to be, a significant impact on the adult's wellbeing (see section on Wellbeing).

An adult's needs are only eligible where they meet all three of these conditions.

Where an adult's needs fluctuate, in order to determine whether the adult's needs meet the eligibility criteria, the assessor shall take into account the adult's circumstances over a period of time that they consider necessary. This is to ensure that the Local Authority has established an accurate indication of the adult's ongoing level of need.

3.2 Step Two

The second condition that assessors must consider is whether the adult is **“unable” to achieve two or more** of the outcomes set out in the regulations.

The Council workers must also be aware that the regulations provide that “being unable” to achieve an outcome includes any of the following circumstances, where the adult:

- is unable to achieve the outcome without assistance. This would include where an adult would be unable to do so even when assistance is provided. It also includes where the adult may need prompting for example, some adults may be physically able to wash but need reminding of the importance of personal hygiene
- is able to achieve the outcome without assistance but doing so causes the adult significant pain, distress or anxiety. For example, an older person with severe arthritis may be able to prepare a meal, but doing so will leave them in severe pain and unable to eat the meal

- is able to achieve the outcome without assistance, but doing so endangers or is likely to endanger the health or safety of the adult, or of others – for example, if the health or safety of another member of the family, including any child, could be endangered when an adult attempts to complete a task or an activity without relevant support
- is able to achieve the outcome without assistance but takes significantly longer than would normally be expected. For example, an adult with a physical disability is able to dress themselves in the morning, but it takes them a long time to do this, leaves them exhausted and prevents them from achieving other outcomes

The Eligibility Regulations set out a range of outcomes. The Council assessors must consider whether the adult is unable to achieve **two or more** of these outcomes when making the eligibility determination.

(a) managing and maintaining nutrition

Assessors should consider whether the adult has access to food and drink to maintain nutrition, and that the adult is able to prepare and consume the food and drink.

(b) maintaining personal hygiene

Assessors should, for example, consider the adult's ability to wash themselves and launder their clothes.

(c) managing toilet needs

Assessors should consider the adult's ability to access and use a toilet and manage their toilet needs.

(d) being appropriately clothed

Assessors should consider the adult's ability to dress themselves and to be appropriately dressed, for instance in relation to the weather to maintain their health.

(e) being able to make use of the home safely

Assessors should consider the adult's ability to move around the home safely, which could for example include getting up steps, using kitchen facilities or accessing the bathroom. This should also include the immediate environment around the home such as access to the property, for example steps leading up to the home.

(f) maintaining a habitable home environment

Assessors should consider whether the condition of the adult's home is sufficiently clean and maintained to be safe. A habitable home is safe and has essential amenities. An adult may require support to sustain their occupancy of the home and to maintain amenities, such as water, electricity and gas.

(g) developing and maintaining family or other personal relationships

Assessors should consider whether the adult is lonely or isolated, either because their needs prevent them from maintaining the personal relationships they have or because their needs prevent them from developing new relationships.

(h) accessing and engaging in work, training, education or volunteering

Assessors should consider whether the adult has an opportunity to apply themselves and contribute to society through work, training, education or volunteering, subject to their own wishes. This includes the physical access to any facility and support with the participation in the relevant activity.

(i) making use of necessary facilities or services in the local community including public transport and recreational facilities or services

Assessors should consider the adult's ability to get around in the community safely and consider their ability to use such facilities as public transport, shops or recreational facilities when considering the impact on their wellbeing. The Local Authority does not have responsibility for the provision of NHS services such as patient transport, however Assessors should consider needs for support i.e. would not understand information being given, when the adult is attending healthcare appointments, if no other support networks are available.

(j) carrying out any caring responsibilities the adult has for a child

Assessors should consider any parenting or other caring responsibilities the person has. The adult may for example be a step-parent with caring responsibilities for their spouse's children.

3.3 Step Three

The third condition that must be met is that the Council assessors must consider whether the adult's needs and their inability to achieve the outcomes above cause or risk causing a significant impact on their wellbeing. The meaning of "wellbeing" is set out in Section 1 of the Care Act 2014 and see definition in section 2 of this Policy.

Assessors must determine how the adult's inability to achieve the outcomes above impact on their wellbeing. Where the adult is unable to achieve more than one of the

outcomes, the assessor does not need to consider the impact of each individually, but should consider whether the cumulative effect of being unable to achieve those outcomes is one of a “significant impact on wellbeing”. In doing so, assessors should also consider whether:

- the adult’s inability to achieve the outcomes above impacts on at least one of the areas of wellbeing in a significant way; or,
- the effect of the impact on a number of the areas of wellbeing mean that there is a significant impact on the adult’s overall wellbeing.

The term “significant” is not defined by the regulations, and must therefore be understood to have its everyday meaning. Assessors will have to consider whether the adult’s needs and their consequent inability to achieve the relevant outcomes will have an important, consequential effect on their daily lives, their independence and their wellbeing.

In making this judgment, assessors should look to understand the adult’s needs in the context of what is important to them. Needs may affect different people differently, because what is important to the individual’s wellbeing may not be the same in all cases. Circumstances which create a significant impact on the wellbeing of one individual may not have the same effect on another.

There is an expectation that assessors will provide objective evidence to support their judgement when applying the criteria.

Prior to applying an eligibility decision a proportionate assessment **must** be undertaken (see Needs Assessment Policy).

If providing for urgent needs prior to a more proportionate assessment, no eligibility decision will be required at that time but should be undertaken as soon as possible.

If referring for preventative intervention, such as universal services, a period of reablement and providing equipment or minor household adaptations, no eligibility decision will be required until the outcome of this intervention is known. In effect the Council is ‘pausing’ the assessment and eligibility process. Early or targeted interventions can delay an adult’s needs from progressing. The pause in the assessment process is to allow such interventions to take effect and for any benefit to the adult to be realised and determined, so that the final assessment of need (and determination of eligibility) is based on the remaining needs which have not been met through such interventions. For example, if the Council believes that a person may benefit from a short-term reablement service which is available locally, it may put that in place and complete the assessment following the provision of that service.

4. FLOW CHARTS/ DIAGRAMS OR EXAMPLES

The table below illustrates the decision making process incorporating:

- the needs
- the outcomes listed in the eligibility regulations and
- the wellbeing principle, which is broken down into areas of wellbeing

Eligibility decision process
<p>Step 1 - Needs</p> <p>The adult's needs arise from or are related to a physical or mental impairment or illness.</p>
<p>Step 2 - Outcomes</p> <p><i>As a result of the needs, the adult is unable to achieve two or more of the following:</i></p> <ul style="list-style-type: none"> a) managing and maintaining nutrition; b) maintaining personal hygiene; c) managing toilet needs; d) being appropriately clothed; e) maintaining a habitable home environment; f) being able to make use of the home safely; g) developing and maintaining family or other personal relationships; h) accessing and engaging in work, training, education or volunteering; i) making use of necessary facilities or services in the local community including public transport and recreational facilities or services; j) carrying out any caring responsibilities the adult has for a child.
<p>Step 3 – Impact on Wellbeing</p> <p><i>As a consequence, there is or is likely to be a significant impact on the adult's wellbeing, including the following:</i></p> <ul style="list-style-type: none"> k) personal dignity (including treatment of the individual with respect); l) physical and mental health and emotional wellbeing; m) protection from abuse and neglect; n) control by the individual over day-to-day life (including over care and support provided and the way it is provided); o) participation in work, education, training or recreation; p) social and economic wellbeing; q) domestic, family and personal relationships; r) suitability of living accommodation; s) the individual's contribution to society.

Examples of Eligibility determinations:**Case Study 1: John Taylor (Eligible)**

John is 32 and has been referred by his mother for an assessment, who is concerned for John and his future. John is unemployed and lives with his mother and she is getting to an age where she realises that she might not be able to provide the same level of care and support for her son as she has done so far.

John is able to manage his own personal care, but his mother does all the housework for both of them. John feels increasingly isolated and will not leave the house without his mother. It is important to John that he is intellectually stimulated and there is a chess club nearby which he would like to join, but John does not feel confident about this due to his anxiety in social situations.

Step 1 - Needs

Adult on the autistic spectrum.

Step 2 - Outcomes

John has severe difficulties socialising and co-operating with other people.

He only has transactional exchanges and cannot maintain eye contact.

John knows that others feel uneasy around him, and spends a lot of his time alone.

As a result, John is unable to achieve the following outcomes:

1. developing and maintaining family or other personal relationships
2. making use of necessary facilities and services in the community

Step 3 - Impact on wellbeing

John is too anxious to initiate developing friendships on his own although he would like to and he feels lonely and depressed most of the time. His nervousness also affects his ability to take advantage of facilities in the community, which could help him feel less lonely. Feeling anxious and lonely has a significant impact on his wellbeing.

Decision:

Eligible

Next Actions:

John's local authority thinks John's needs are eligible. Both John and the local authority agree that the most effective way of meeting John's needs is to develop his confidence to join the chess club. John uses his personal budget to pay for a support worker to accompany him to an autism social skills group, and to the chess club and to travel with him on the bus to get there. John's local authority notes that John's mother could need support too and offers her a carer's assessment

Case study 2: Dave Brown (Not Eligible)

Dave is 32 and has been referred by his mother for an assessment, who is concerned for Dave and his future. Dave lives with his mother and she is getting to an age where she realises that she might not be able to provide the same level of care and support for her son as she has done so far.

Dave is able to manage his own personal care, but his mother does all the housework for both of them. Dave also works, but would like to get a job that is a better match for his intellectual abilities as his current job does not make the most of his numerical skills. Dave's social contact is mainly online because he feels more comfortable communicating this way and he spends a lot of time in his room on his computer.

Step 1 - Needs

Adult on the autistic spectrum.

Step 2 - Outcomes

Dave struggles severely in social situations leading to difficulties accessing work and cooperating with other people.

He only has transactional exchanges with others and cannot maintain eye contact.

Dave knows that others feel uneasy around him and spends a lot of his time alone.

Step 3 - Impact on wellbeing

Dave is not in ideal employment, but has access to and is engaged in work.

This has some impact on his wellbeing but not to a significant extent.

Dave prefers to socialise with people online. It emerges from conversations

with Dave that he has access to those personal relationships that he considers essential.

Dave is contributing to society, has contact with others, is in employment and is able to look after himself.

Decision:**Not Eligible**

Dave has difficulties doing some of the things that many other people would think should be a natural part of daily living and he is unable to participate in recreational activities in a conventional sense.

Those aspects of his wellbeing that are affected by the needs caused by his autism are not so significantly affected that Dave's overall wellbeing is at risk.

The local authority decides that Dave's needs are not eligible, because they do not have a significant effect on his wellbeing despite his mother's concerns.

Next Actions:

The local authority records Dave's assessment and sends him a copy. They include information about a local autism support group.

Dave's local authority notes that Dave's mother could well need support and offers her a carer's assessment.

5. DOCUMENT HISTORY

RELATED DOCUMENTS	
OTHER RELATED DOCUMENTS	<ul style="list-style-type: none"> • Needs Assessment Policy • Continuity of Care Policy • Ordinary Residence Policy • Wellbeing Policy
LEGISLATION OR OTHER STATUTORY REGULATIONS	<ul style="list-style-type: none"> • The Care and Support (Eligibility Criteria) Regulations 2014 • The Care Act 2014 - Part 1 Assessing Needs Section 13 • Chapter 1 Promoting Wellbeing Statutory Guidance • Chapter 6 Assessment and eligibility Statutory Guidance • Chapter 19 Ordinary residence Statutory Guidance • Chapter 20 Continuity of care Statutory Guidance

Adult Social Care Policies and Procedures

ORDINARY RESIDENCE

Including Disputes and Financial Adjustments

WARNING! Please note if the review date shown below has passed this procedure may no longer be current and you should check the PPG E Library for the most up to date version

Contents

ORDINARY RESIDENCE

POLICY VERSION CONTROL	2
1. POLICY STATEMENT	3
2. KEY DEFINITIONS AND PRINCIPLES APPLICABLE TO THIS POLICY	4
2.1 Ordinary Residence:	4
2.2 Lancashire:	4
2.3 Urgent Needs:	4
3. PROCEDURES	4
3.1 When to establish ordinary residence:	4
3.2 How to establish if a person is Ordinarily Resident in Lancashire or elsewhere:	4
3.3 People Acquiring Ordinary Residence INTO Lancashire, (also see sections below)	5
3.4 People Acquiring Ordinary Residence OUT of Lancashire, (also see sections below)	5
3.5 Continuity of Care; individuals moving from one local authority to another and when to start/stop funding	5
3.6 Capacity and Interface with Ordinary Residence	6
3.7 Ordinary Residence Disputes and Financial Adjustments	6
4 FLOW CHARTS/ DIAGRAMS OR EXAMPLES	10
5 DOCUMENT HISTORY	48

POLICY VERSION CONTROL

POLICY NAME	Ordinary Residence Including Disputes and Financial Adjustments		
Document Description	“Ordinary residence” is crucial in deciding which local authority is required to meet the needs in respect of adults with care and support needs and carers. Whether the person is “ordinarily resident” in the area of the local authority is a key test in determining where responsibilities lie between local authorities for the funding and provision of care and support. A local authority is only required to meet needs in respect of an adult who is “ordinarily resident” in their area (or is present there but has no settled residence).		
Document Owner 1) Officer, position and contact details			
Document Author	Linda Thomas	Date	2 November 2015
Status (Draft/Live/Withdrawn)	Draft	Version	0.3
Last Review Date		Next Review Due date	
Approved by	Tony Pounder	Position	Director of Adult Services
Signed		Date Approved	

DOCUMENT CHANGE HISTORY			
Version No	Date	Issues by	Reason for change

1. POLICY STATEMENT

National Guidance on Ordinary Residence was introduced by the Department of Health on 19 April 2010, updated in April 2013 and again in October 2013. The guidance applies to Social Services and sets out how to identify which Local Authority is responsible for funding/provision of care for people aged 18 and over who are assessed as needing care and support services.

The duty to provide social care services rests with the local authority in whose area the person is "ordinarily resident". It is therefore important to establish where an individual is ordinarily resident.

Provision of services should **never** be delayed because of uncertainty about which local authority is responsible. An agreement to provide and fund services until an issue of ordinary residence is resolved will not have a bearing on the final decision.

The local authority that is meeting the needs of the individual or the carer on the date that the dispute arises, must therefore continue to do so until the dispute is resolved. If no local authority is currently meeting the individual's needs and it is clear assessed needs are required to be met, the Council must accept provisional responsibility and not delay in responding to any care needs until any dispute is resolved.

The key to ensuring that an individual's care is continued, is through both local authorities working together and that the individual and their carer, if they are continuing to care for the adult, are at the centre of the process.

If no local authority is currently meeting the individuals needs and it is clear assessed needs are required to be met, the council must accept responsibility and not delay any care needs until any dispute is resolved.

These Lancashire County Council (Council) Ordinary Residence Procedures should be read in conjunction with the National Guidance and amendments as per Care Act 2014, The Care and Support (Ordinary Residence) (Specified Accommodation) Regulations 2014 and Care Act Statutory Guidance Oct 2014. The National Guidance and Care Act Guidance provides details of situations in which a person's ordinary residence may be an issue.

Therefore to fulfil its duty under section 39 to 41 of the Care Act, the Council will, working with its statutory, voluntary and private sector partners, comply to ordinary residence guidance relating to individuals who require care and support.

The Council will make all reasonable adjustments to ensure that all disabled people have equal access to participate in the ordinary residence decision in line with the Equality Act 2010.

The geography and population of Lancashire is diverse and our Adult Social Care Policies and practice will aim to deliver services and supports that are representative of the communities in which we work.

The Council will follow the Care Act and other relevant legislation, policies and guidance to ensure our practice is of high quality and legally compliant. Where our customers or those we come into contact with wish to challenge or raise concerns in regard to our ordinary residence decisions, the Council's complaints procedures will be made available and accessible.

2. KEY DEFINITIONS AND PRINCIPLES APPLICABLE TO THIS POLICY

2.1 Ordinary Residence:

No Legal definition is available, this is why it is a complex area of decision making.

2.2 Lancashire:

All references to "Lancashire" in this document mean, Lancashire as a geographical location. Where it seems any references relate to Lancashire County Council, it will be clearly established and is likely to be referenced as "the council" or "council", for the sake of ease and consistency.

2.3 Urgent Needs:

The Care Act Section 19(3) provides local authorities with the powers to meet urgent needs where they have not completed an assessment. In this context, 'urgent' takes its everyday meaning, subject to interpretation by the courts, and may be related to, for example, time, severity etc. Authorities may meet urgent need for care and support regardless of the person's ordinary residence. Where an individual with urgent needs approaches or is referred to the local authority, including circumstances such as provider failure, the local authority should provide an immediate response and meet the individual's care and support needs. Meeting urgent needs can also apply to other organisations for example the completion of an NHS Continuing Health Care Fast Track Pathway Tool.

3. PROCEDURES

3.1 When to establish ordinary residence:

Ordinary residence should be determined as soon as possible after a person contacts us to request an assessment of social care needs and once any urgent needs have been met.

Customer Service Centre staff and community teams can all gather information to inform the decision about ordinary residence. Assessment and provision of services should not be delayed because of uncertainty about ordinary residence.

3.2 How to establish if a person is Ordinarily Resident in Lancashire or elsewhere:

The meaning of Ordinary Residence is outlined in within the National Guidance (paragraphs 18 to 37). Ordinary Residence depends on the facts of each case; factors such as:

- time spent in the place,
- continuity of stay apart from temporary absences, and
- future intentions, are all relevant

The Care Act Statutory Guidance advises, the term should be given its ordinary and natural meaning (Page 343, para 19.12).

In most cases it will be obvious that an individual is ordinarily resident in Lancashire because they have always lived in Lancashire; or they have made a decision to move to Lancashire and settle here (and no other Local Authority was involved in 'placing' the person in Lancashire).

In many cases it will be obvious that a person is **NOT** ordinarily resident in Lancashire

If you are in doubt about a person's ordinary residence you should check the following:

- Where does the person spend most of their time now?
- Where has the person spent most of their time in the past?
- Was any other local authority involved in arranging or funding the current placement?
- If the person does not have capacity to make a decision about where to live what was the outcome of the best interest decision about where they will live?
- What are the person's plans for the future in terms of settling down?

To help you make a decision about Ordinary Residence you should refer to the Council's Ordinary Residence Flow chart (see below).

If, after checking the facts of the case, and reviewing these facts against the scenarios in the National Ordinary Residence Guidance, Care Act, Care Act Regulations and Care Act Statutory Guidance Oct 2014, it is still not clear whether the person is ordinarily resident in Lancashire you should seek advice from your manager and/or the legal team.

3.3 People Acquiring Ordinary Residence INTO Lancashire, (also see sections below)

A pathway document 'Continuity of Care' will assist staff who are working with people who have (or will) become ordinarily resident in Lancashire.

3.4 People Acquiring Ordinary Residence OUT of Lancashire, (also see sections below)

A pathway document 'Continuity of Care' will assist staff who are working with people who have (or will) become ordinarily resident outside of Lancashire.

3.5 Continuity of Care; individuals moving from one local authority to another and when to start/stop funding

National Guidance on Ordinary Residence does not specify when responsibility for funding an ordinary residence case transfers from one Local Authority to another. The Care Act 2014, The Care and Support (Continuity of Care) Regulations 2014 and Statutory Guidance Oct 2014 (section 20, pages 355-364) have introduced assistance to local authorities on how to implement such situations, along with clarifying when a local authority would retain responsibility for an individual under the 'specified accommodation' Regulations. If staff are unclear they should seek assistance from their Advanced Practitioner/ Operations Manager and if necessary seek Legal advice (adlegaladvice@lancashire.gov.uk).

3.6 Capacity and Interface with Ordinary Residence

The Mental Capacity Act 2005 plays an important part in Ordinary Residence if a person lacks capacity, in relation to residence, care and treatment or other relevant key decisions. Please contact legal for preliminary advice if a dispute on Ordinary Residence seems to be likely. The usual rules of acquisition of Ordinary residence do not apply.

3.7 Ordinary Residence Disputes and Financial Adjustments

If there is a dispute between two or more Local Authorities about the ordinary residence status of an individual, staff can refer to the Ordinary Residence Guidance Part 5, additionally the Care Act 2014 has introduced The Care and Support (Disputes between Local Authorities) Regulations 2014. This is also considered in the Care Act Statutory Guidance Oct 2014 Section 19 (pages 341-353) and in Annex H1-H9 (pages 469-492).

Any urgent needs should be met, the local authority should use its power to meet needs in such circumstances, prior to a full assessment of need and eligibility determination.

Staff should consult the Ordinary Residence Flow Chart to assist in determining at the assessment and eligibility stage that an individual is the responsibility of Lancashire County Council i.e. an Ordinary Resident.

If staff are unclear about an individual's Ordinary Residence firstly they should discuss the case with an Advanced Practitioner. If after consulting the information available to them the individual's Ordinary Residence remains unclear they should contact Principal Social Worker(s). If it still remains unclear Lancashire's Legal Section should be contacted for advice and how to proceed.

If it is considered that the individual is NOT an Ordinary Resident of Lancashire County Council, then the Social Care Worker needs to contact the appropriate Local Authority to discuss/ advise why Lancashire considers the individual to be an Ordinary Resident of that area.

If that Local Authority considers the individual is not their responsibility, the Social Care Worker needs to establish the reasons for this view and record this with full details of the individual making this decision. The Social Care Worker needs to establish the other Local Authority's Legal Section contact details.

On discussion with the Advanced Practitioner/ Operations Manager the Social Care Worker needs to clearly advise that at this point the council is raising a 'Dispute' and will be referring to the council's Legal Section.

The Social Care Worker is to urgently refer to Legal Section (adlegaladvice@lancashire.gov.uk) with full details as per standard referral form.

Any Legal advice given **must** be followed and acted upon urgently.

The Operations Manager needs to refer to the Area Operations Manager to discuss who should become the 'named' individual, for liaison throughout the dispute period.

At the conclusion of the 'dispute' any financial adjustment must be discussed with the appropriate Finance Section from both Lancashire and other authority via the named individual through the dispute.

The adult and /or carer should be informed of the outcome as this decision may be of relevance for future care and support, as required, along with contact details of the authority to who the individual will be considered an ordinary resident.

Staff involved in a dispute are strongly advised to refer to the Care Act, Regulations and Statutory Guidance. In particular staff should be aware that:

- If the council is currently funding services for the individual we will be the 'lead Authority' for coordinating a resolution of the dispute between one or more local authorities.
- If another Authority is the Lead Authority, the council will still be required to nominate a named contact in relation to any dispute
- As soon as is reasonably practicable after the dispute arises (and certainly within two weeks of the dispute starting) the council must nominate a lead or named person as contact for resolution of the dispute. The nominated lead/named person for resolution must be agreed with the Area Operational Manager (or lead for Adult Mental Health cases). The Area Operational Manager will ensure that the legal department and Heads of Services are notified as appropriate of any ongoing disputes about Ordinary Residence.
- The Lead Contact should:
 - Gather information from all involved local authorities that may help clarify the facts and resolve the dispute, establishing the facts of the case will often be key to effective resolution of the dispute

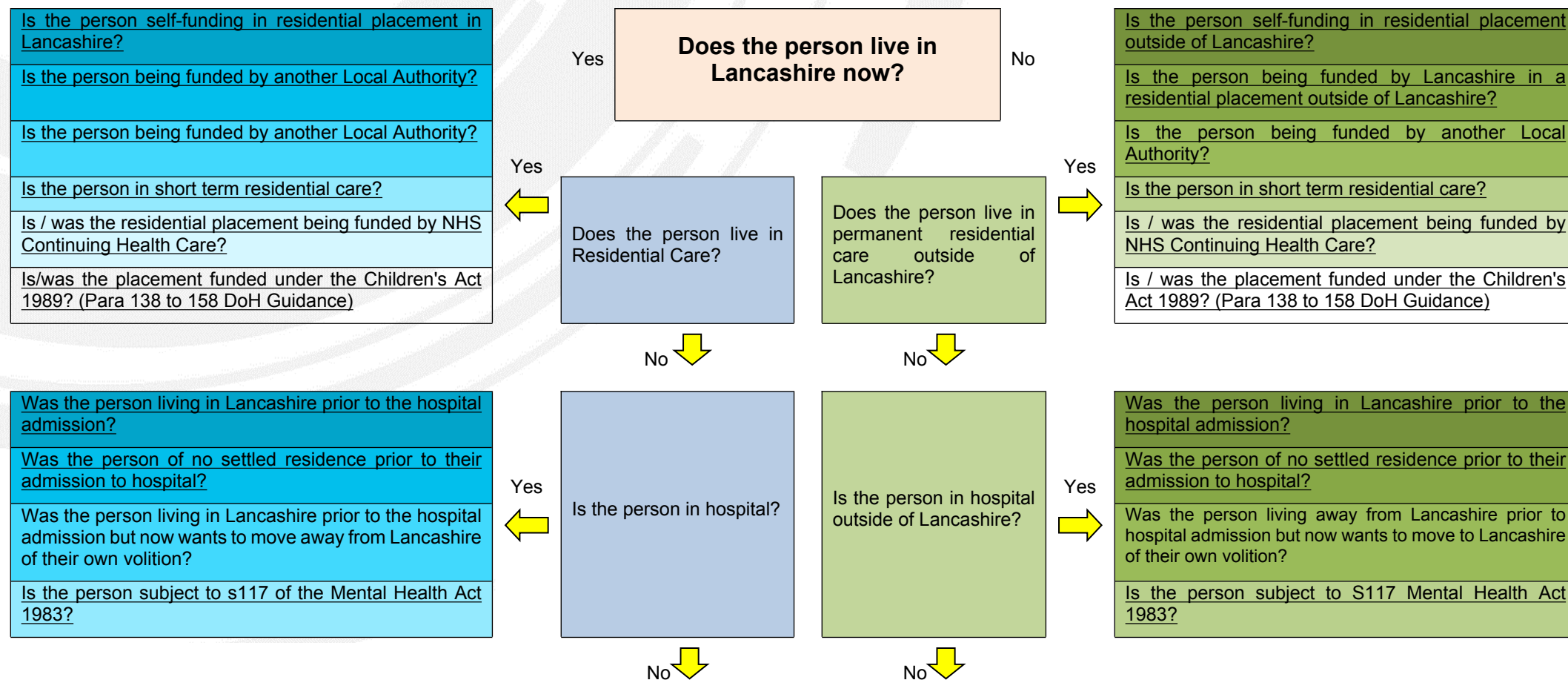
- Ensure that the individual and their family/representative as appropriate are kept up to date with progress on the dispute
- If the dispute is not resolved within four months of the date on which it arose, then the 'lead authority' must refer the dispute to the Secretary of State/ appropriate person requesting that they make a determination.
- In cases of dispute the lead/named contact should keep a chronology of all action/contact around resolution of the dispute. Every attempt should be made to resolve the dispute rather than approaching the Secretary of State/ appropriate person.
- Care Act Regulations advise the following documents must be available to the Secretary of State/ appropriate person:
 - (1) The referral must include the following documents:
 - (a) a letter signed by the lead authority in relation to the dispute, stating that the dispute is being referred;
 - (b) a statement of facts signed on behalf of each of the authorities which includes the information specified in paragraph (2); and
 - (c) copies of all correspondence between the authorities which relates to the dispute.
 - (2) The specified information is:
 - (a) an explanation of the nature of the dispute;
 - (b) a chronology of the events leading up to the referral of the dispute, including the date on which the dispute arose;
 - (c) details of the needs of the adult ("the relevant adult") or carer to whom the dispute relates from the beginning of the period to which the dispute relates;
 - (d) a statement as to which local authority has met those needs since then, how those needs have been met and the statutory provisions under which they have been met;
 - (e) details of the relevant adult's place of residence, and of any former places of residence which are relevant to the dispute;
 - (f) where the person to whom the dispute relates is a carer, details of the place of residence of the adult needing care, and of any former places of residence that are relevant to the dispute;
 - (g) in a case where the relevant adult's capacity to decide where to live is relevant to the dispute, either—
 - (i) a statement that the authorities agree that the adult has, or lacks, such capacity; or
 - (ii) information which appears to any of the authorities to be relevant to the question of whether the adult has, or lacks, such capacity;
 - (h) a statement as to any other steps taken by the authorities in relation to the relevant adult or carer which may be relevant to the dispute;

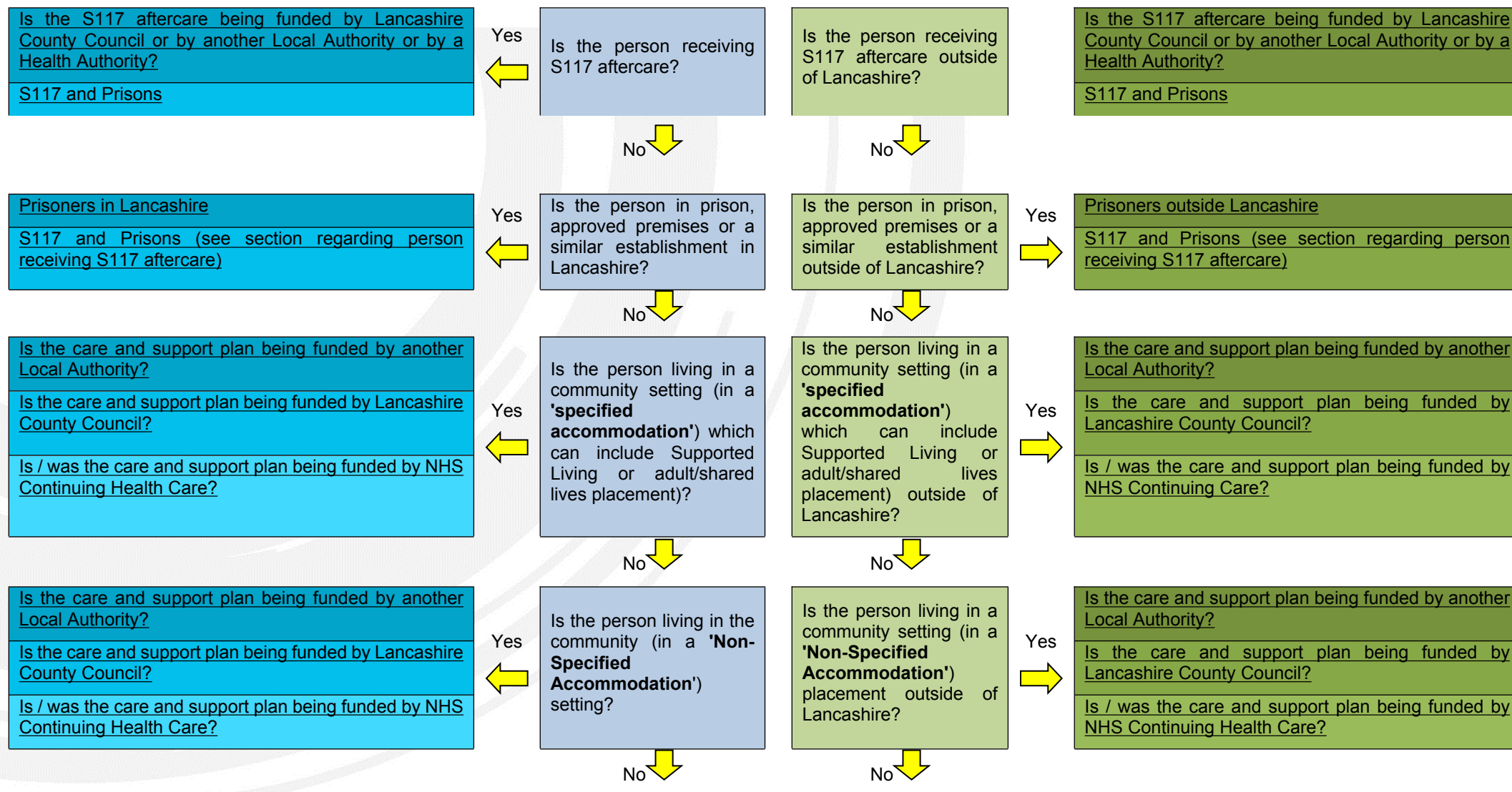
- (i) details of the steps that the authorities have taken to resolve the dispute between themselves; and
- (j) any other information which appears to any of the authorities to be relevant to the determination of the dispute.

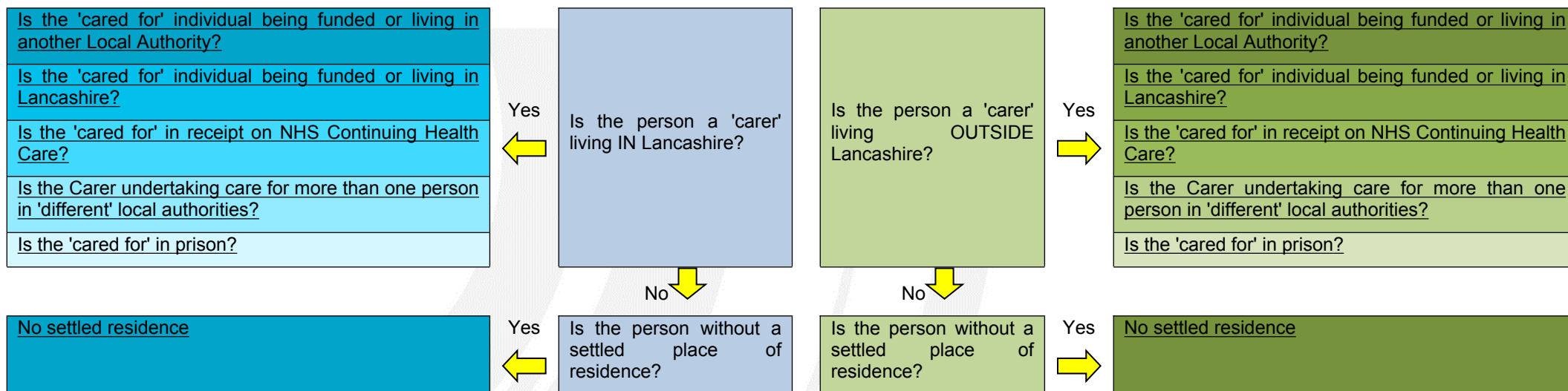
Once a determination has been made liaison will be required with the appropriate individual within Finance to ensure a financial adjustment is undertaken between the council and any other Local Authority involved i.e. the council may be required to reimburse another authority or the council may require reimbursement.

4 FLOW CHARTS/ DIAGRAMS OR EXAMPLES

To use this document: Please view the flowchart below and find the section that applies to the case you are working with, hover the cursor over the relevant section and press 'control and click' this will take you to the full text with information relevant to your case. If you want to return to the flowchart press 'back to top' and you will be returned to the flowchart.







Ordinary Residence

Does the person live in Residential Care?

Is the person self-funding in residential placement in Lancashire? (para 72 to 76 of DoH guidance)

A person who had the capacity to consent to a move to a permanent residential care in Lancashire under a private agreement will usually be ordinarily resident in Lancashire. This would usually be when an individual or family have made their own arrangements and the local authority has not assisted in any way, other than perhaps sign posting.

If another Authority funded the first 12 weeks of the placement under the property disregard rules the person may still acquire ordinary residence in Lancashire after the 12 week disregard period (para 84 to 86 of DoH Guidance)- depending on the specifics of each case. Care Act Statutory Guidance (Annex H3, page 472) advises this could occur when an individual becomes self-funding, this includes declining other possible funding assistance from the originating authority, such as a Deferred Payment Agreement.

During the 12 week disregard period, an authority should be offering a Deferred Payment Agreement to those who qualify. If the person accepts a deferred payment agreement from the originating Local Authority after the 12 week property disregard period then the individual remains the responsibility of that Local Authority until the Deferred Payment Agreement is concluded (Care Act Statutory Guidance Annex H2, page 471)

If the person did not have capacity to enter into the private arrangement to pay the home fees and in the absence of anyone else another Authority made the arrangement for the person to move into the home (even though the person might be self –funding) then the person remains the responsibility of the Local Authority that made arrangements for their residential accommodation in the first instance.

[Back to top](#)

Is the person being funded by another Local Authority? (Para 55 to 59 of DoH guidance)

(Care Act Statutory Guidance pages 346-348) (section 39 Care Act 2005).

If another Local Authority made arrangements for the provision of the person's residential accommodation in Lancashire the person is deemed to be ordinarily resident in the place (first authority) where they were ordinarily resident immediately before the residential accommodation was provided. The placing Local Authority should inform Lancashire that they have placed the person in our area. The Local Authority that made the placement will continue to be the responsible Authority until there is a relevant change of circumstances, e.g.

If the person chooses to leave residential accommodation (and had capacity to make such a decision) a new ordinary residence decision will be made depending on the facts of their new situation, if it is a move to alternative 'specified accommodation' the originating authority would remain responsible for the person and be involved in any decision making process regarding this.

If the person is detained while a resident in Lancashire under section 3 (or other qualifying section) of the Mental Health Act and becomes entitled to s117 aftercare Lancashire will become responsible for their mental health aftercare only (para 179 to 189 DoH guidance)

Any other needs outside S117 Aftercare would remain the responsibility of their originating (first) authority.

[Back to top](#)

Is the person being funded by another Local Authority?

(Care Act Statutory Guidance Chapters 19 & 20)

This person is ordinarily resident in the area of the Local (first) Authority that is funding the placement. If the person wants to move to a 'non-specified' community placement in Lancashire we may have responsibility for them in the future and should be aware of the person moving into the area and the assessment of their social care needs. (refer to Care Act Continuity of Care protocols)

If they want to move to a new residential placement in Lancashire and require Local Authority funding then the existing funding authority should arrange that placement. They would then remain responsible for such funding.

[Back to top](#)

Is the person in short term residential care?

The decision on Ordinary Residence will depend on where the person was living prior to the short term placement combined with information about their current funding arrangements and intentions for the future.

[Back to top](#)

Is/was the residential placement being funded by NHS Continuing Health Care?

- If placement was made on or before 18th April 2010 – possibly seek Legal advice (these cases are determined on a case by case basis) (para 115b of the DoH Guidance applies)

- If placement was after 19th April 2010 and the NHS was funding the residential or 'specified accommodation' placement but following a review the person is no longer entitled to free NHS Continuing Health Care they will be deemed to be ordinarily resident in the Local Authority Area where they were ordinarily resident immediately prior to being provided with NHS Continuing Health Care. (para 112 to 115 of the DoH Guidance) (Care Act Statutory Guidance Annex H5 pages 475-476).

This includes NHS continuing Care and case management and will include GP practices.

[Back to top](#)

Is/was the placement funded under the Children's Act 1989? (Para 138 to 158 DoH Guidance)

If the person is a young person placed in residential accommodation out of area as a child under the Children's Act 1989 then the starting presumption is that they acquire ordinary residence in the area of the placing local authority, however this is not always the case it depends on the facts and such presumption can easily be rebutted. Consider how long has the person lived in Lancashire, what is their intention for the future, what connections if any do they retain in the placing authority area, (paragraphs 138 to 158 of the National Guidance apply).

For example when a young person aged 18 or over who may be entitled to leaving care services, provided by the placing authority under the Children Act 1989 Act. As leaving care provisions do not include accommodation (with the exception of vacation accommodation if attending college or university and accommodation that is provided in exceptional circumstances). If a former relevant child has been placed out of area as a looked after child, and wishes to remain in this area on reaching the age of 18, they may then be found to be ordinarily resident Lancashire. In this situation, their accommodation would be provided by Lancashire but the provision of their leaving care would remain the responsibility of the local authority that had responsibility for them under the 1989 Act.

Bear in mind at all times consideration of the young person's capacity to make decisions on residence.

The Children's Act (105(6)) of the 1989 Act provides when determining the Ordinary residence of a Child for any purpose of the Act, any period in which the child lives in a school [or other institution, pursuant to a supervision order under the 1989 Act, or youth rehabilitation order under part I of the Criminal Justice Act 2008, or while being provided with accommodation by or on behalf of another authority] should be disregarded. NB, The Local Authority responsible for leaving care services will remain that in which the young person is ordinary resident for the purposes of the Children Act 1989.

[Back to top](#)

Is the person in hospital?**Was the person living in Lancashire prior to the hospital admission?**

If the person was living in Lancashire previously and intends to return to Lancashire on discharge they will be ordinarily resident in Lancashire.

If a person who was ordinarily resident in Lancashire prior to admission is to be discharged from hospital to residential or 'specified' accommodation outside of Lancashire we retain funding responsibility for that person – unless they are self-funders (para 60 to 65 of the DoH Guidance) and would not be entitled to the 12 week disregard or a Deferred Payment Agreement.

If there is a dispute about the ordinary residence of a patient requiring discharge see (para 159 to 166 of the DoH Guidance). Also see Care Act Sections 39-41, Regulations and Statutory Guidance Chapter 19 and Annexes H1-H9. See also, Ordinary Residence Disputes and Financial Adjustments procedures.

Care will need to be taken regarding funding and savings. The person may dip under the threshold of the cap and may still acquire Ordinary Residence in the area where the home currently is. This will be determined by other factors such as capacity to make decisions to make the initial move to the home and any assistance that was had by any authority. Please revert to legal for any clarification on such matters.

[Back to top](#)

Was the person of no settled residence prior to their admission to hospital?

The person will usually be deemed to be ordinarily resident in the place where the hospital is. (para 162 of the DoH Guidance), also see Care Act Statutory Guidance Chapter 19 para 19.22-19.24 and Annex H9 page 488

If there is a dispute about the ordinary residence of a patient requiring discharge see (para 159 to 166 of the DoH Guidance), also see Care Act Statutory Guidance paras 19.53-19.66 and Annex H9 page 488 and s40/41 care Act 2005.

[Back to top](#)

Was the person living in Lancashire prior to the hospital admission but now wants to move away from Lancashire

Where a person has decided that they want to move out of Lancashire on discharge to a 'non-specified' community placement (for example to be closer to family) it is likely they will become ordinarily resident in the area that they move to. We should contact the receiving 'second' Local Authority to include them in the discharge process.

If the person will be moving to a residential or 'specified' placement outside of Lancashire on discharge the person will be deemed for the purpose of arranging that placement to be ordinarily resident in the area where they were living immediately before admission to hospital (para 60 to 65 of the DoH guidance). If they resided in Lancashire, then that person would remain the responsibility of Lancashire County Council. If however the person self-funds the residential placement they will become ordinarily resident in the area where the residential home is situated, if they do not qualify for the 12 week disregard or Deferred Payment Agreement.

If there is a dispute about the ordinary residence of a patient requiring discharge see (para 159 to 166 of the DoH Guidance), Also, section 40/41 care Act 2005 and seek legal advice, if required and prior to any dispute discussions taking place with the other authority.

If a best interest decision has been made regarding a change of location, then this means that the person lacks capacity to make decisions in this area. Paragraph 19.21 of the statutory guidance and the recent Cornwall case state this clearly. The supreme court ruling might be challenged but it is good law at the time of writing the policy. A person who lacks the capacity to make decisions around residence "cannot voluntarily adopt a place of ordinary residence".

[Back to top](#)

Is the person subject to s117 Mental Health Act 1983?

If the person is detained under a qualifying section of the MHA 1983 (i.e. section 3, 37, 45A, 47 and 48) they will become subject to s117 after-care when they leave hospital, which may not be the same time as when they are discharged from detention, and the Local Authority where the person was Ordinarily Resident immediately prior to their detention will become responsible for their aftercare (para 179 to 189 DoH guidance).

This is a continuing duty until both health and social services are satisfied that the person no longer has a need of the services (s117 (2)) MHA 1983 as amended. Noteworthy that s117 (6) introduces a definition for the first time of aftercare services.

Any other needs outside S117 Aftercare would remain the responsibility of their originating (first) authority. The effect of the s39 (4) is that if aftercare services under s 117 includes provision of accommodation. The person does not acquire the Ordinary Residence in the area where he is being provided with that accommodation- if it is different from his existing place of Ordinary residence.

– Regardless of where the AMHP is from, good practice would dictate that the Local Authority of residence be notified of any such application under the MHA 1983.

Note that

- if a person is discharged on a Community Treatment Order and that CTO is then revoked and the person recalled to hospital the original detention is re-instated as though the person had never been a community patient so residence is established by looking at where the person resided at the point they were originally detained (not where they resided during the CTO)

- if a person is discharged on leave of absence under s17 the patient can be recalled under the same authority to detain from which they were granted leave so residence is established by looking at where the person resided at the point they were originally detained (not where they resided during the s17 leave)

[Back to top](#)

Is the person receiving S117 aftercare?

Is the s117 aftercare being funded by Lancashire County Council or by another Local Authority or by a Health Authority?

Once entitlement to s117 aftercare is established responsibility rests with the same Local Authority even if the person moves to a new area.

The s117 responsibility is **re-considered** if the person is **re-detained** under a provision of the 1983 Act and continues to be eligible for s117 aftercare until formally discharged.

The Authority where the person was living immediately prior to the most recent detention is responsible for the s117 after-care, even if the person does not return to live in that area. (para 182 to 189 of the DoH guidance)

Any other needs outside S117 Aftercare would remain the responsibility of their originating (first) authority.

Note that

- if a person is discharged on a Community Treatment Order and that CTO is then revoked and the person recalled to hospital the original detention is re-instated as though the person had never been a community patient so residence is established by looking at where the person resided at the point they were originally detained (not where they resided during the CTO)

- if a person is discharged on leave of absence under s17 the patient can be recalled under the same authority to detain from which they were granted leave so residence is established by looking at where the person resided at the point they were originally detained (not where they resided during the s17 leave)

[Back to top](#)

S117 and Prisons

Where prisoners have been detained under s47 and s48 of MHA 1983 and transferred back to prison their S117 aftercare should be dealt with in the same way as it would be in the community apart from any provisions that are disapplied in custodial settings such as direct payments and choice of accommodation. S117 (3) applies to determine which is the responsible local authority.

Therefore if the individual was in a Lancashire Prison when detained they will remain the responsibility of Lancashire for S117 after care (**only**) when moving to another area. For example this could be on discharge from Secure Hospital to an open prison/ accommodation outside Lancashire, then Lancashire would need to meet any S117 aftercare needs (but only these needs, not physical care needs, which would be the responsibility of the area of the prison or the individuals settled residence).

(Care and Support Statutory Guidance Page 322 Chapter 17.6.)

Please note there is a s75 Agreement with LCFT and Lancashire County Council to facilitate any required needs of prisoners. Please seek legal advice should you require any further discussions and/or information on this matter.

[Back to top](#)

Is the person in a prison, approved premises or a similar establishment due to imposed bail conditions in criminal proceedings IN Lancashire?

Prisoners etc. (Care Act Section 76(1), Care Act Statutory Guidance Oct 2014 Chapter 17, DoH Ordinary Residence Guidance Oct 2013 para 107 to 111):

The Care Act highlights that people in custody or custodial settings who have needs for care and support should be able to access the care they need, just like anyone else. Adults detained or residing in a custodial setting are treated as if they were ordinarily resident in the area where the custodial setting is located i.e. whilst resident in a prison, approved premises etc. they are to be considered as an ordinary resident of Lancashire. The individual in such settings is entitled to all other aspects of the health and care systems i.e. consideration of NHS Continuing Health, unless prohibited by Acts, Regulations or Guidance.

If an individual is transferred to another custodial establishment in a different local authority area i.e. no longer in Lancashire, the responsibility for care and support will transfer to the new area/ Local Authority. In these situations Continuity of Care (Care Act Statutory Guidance Section 20) processes should be followed if possible. In some circumstances Local Authorities may not be informed of a prisoners pending transfer and therefore can only undertake liaison with previous authority after transfer, however the provision of appropriate care and support needs to be maintained.

On being discharged from prison, approved premises etc. if the individual is requiring care and support each case must be considered individually having regard to where the person lived prior to going into prison and where they want to live on discharge. It is likely you will need to seek Legal advice. Any immediate or urgent needs should be met whilst seeking Legal clarification

If the person needs residential accommodation it might be possible to argue that this should be arranged by the Local Authority where the person lived prior to entering prison. It is likely you will need to seek Legal advice. Any immediate or urgent needs should be met whilst seeking Legal clarification.

Consideration of 17.55 of Statutory Guidance as it makes it clear that the deeming provisions in s39 Care Act 2014 do not apply to people leaving prison. Therefore, the newly released prisoner's Ordinary residence is not deemed to be the Local Authority in which they resided before their imprisonment. Ten statutory guidance acknowledges that working out the OR of a newly released prisoners is not straightforward- as it might not be possible for the offender to return to their previous area.

Please note there is a s75 Agreement with LCFT and Lancashire County Council to facilitate any required needs of prisoners. Please seek legal advice should you require any further discussions and/or information on this matter.

[Back to top](#)

S117 and Prisons (see section regarding person receiving S117 aftercare)

[Back to top](#)

Is the person living in a community setting (in a 'Specified Accommodation' which can include Supported Living or adult/shared lives placement)?

Is the care and support plan being funded by another Local Authority?

If the person is living in a '**specified accommodation**' setting even with a tenancy then they will remain the responsibility of the originating (first) Local Authority. They **will not** become the responsibility of Lancashire unless moving into a 'non-specified' accommodation setting. (The Care and Support (Ordinary Residence) (Specified Accommodation) Regulations 2014)

[Back to top](#)

Is the care and support plan being funded by Lancashire?

(see Care Act Statutory Guidance Chapters 19 & 20)

Lancashire will remain responsible for the care and support of the individual whilst they remain in a 'specified accommodation' setting. If the individual needs to move to an alternative 'specified accommodation' outside or within Lancashire, we (Lancashire) will remain responsible for these transfers.

Should the individual be able to move to a '**non-specified**' accommodation setting **within** Lancashire then they will clearly remain an ordinary resident of Lancashire.

Should the individual be able to move to a '**non-specified**' accommodation setting **outside** Lancashire then they will become an ordinary resident in the new (second) Local Authority. In such circumstances Lancashire should instigate the Continuity of Care protocols.

[Back to top](#)

Is/was the care and support plan being funded by NHS Continuing Health Care?

If the NHS was funding the placement but following a review the person is no longer entitled to free NHS Continuing Health Care they will be deemed to be ordinarily resident in the Local Authority Area where they were ordinarily resident immediately prior to being provided with NHS Continuing Health Care. (para 112 to 115 of the DoH Guidance) (Care Act Statutory Guidance Annex H5 pages 475-476)

[Back to top](#)

Is the person living in a community (in a 'Non-Specified Accommodation') setting?

Is the care and support plan being funded by another Local Authority?

(see Care Act Statutory Guidance Chapters 19 & 20)

If the individual has moved into their own accommodation within Lancashire, then in most situations an individual should have had an assessment prior to the move, as per the Care Act Continuity of Care protocols and will therefore be aware of the care and support/funding that will be in place from the first day of residence. If this assessment and care and support plan is not in place, then Lancashire County Council must continue with the previous care and support received from the previous Local Authority until has completed an (re)assessment and advised the individual of any changes. The council are responsible for funding this placement from the day they are advised of this change of residence.

Bear in mind that the individual has capacity to consent to the move in the first instance. Also, if the former LA it seems has assisted and supported a move and has not adopted the principles of "continuity of care protocols"- then contact legal for advice as it might be possible that a dispute might arise.

[Back to top](#)

Is the care and support plan being funded by Lancashire County Council?

If the individual is receiving care and support from the council and wishes to move from present to new accommodation **within** Lancashire, then this is their decision. Prior to the move a re-assessment should be undertaken to ensure that the individual will be aware of the care and support that may be available following the move or that the current care and support plan will continue to meet their needs.

If the individual is receiving care and support from Lancashire and wishes to move from present to new accommodation **outside** Lancashire, then this is their decision. At this time the individual or Lancashire should contact the Local Authority whose geographical area to which they are considering moving. This will enable the individual to receive 'Advice and Information' about that Local Authority to assist their decision making. If the individual decides the move is to go ahead then the receiving/ new (second) Local Authority should undertake an assessment prior to the move, as per Continuity of Care protocols. The second Local Authority will become financially responsible from the first day of moving into the new authority, whether they have undertaken an assessment or not.

This is accurate as long as it is established that the individual has the capacity to make this decision

[Back to top](#)

Is/was the care and support plan being funded by NHS Continuing Health Care?

- If the individual had chosen to move to Lancashire as the individual is in non-specified accommodation the individual would become the responsibility for services/ funding of the council if remaining in that environment and no longer meeting the threshold for free NHS Continuing Health Care.

- If however on no longer meeting the threshold for NHS Continuing Healthcare but at that time would require placement in 'specified accommodation' then the individual is the responsibility of the authority where they were resident before meeting NHS Continuing Healthcare.

For example if they had been resident in Cumbria and had moved to Lancashire to be with relatives, if dropping out of NHS Continuing Healthcare and immediately requiring 'specified accommodation' then this will be the responsibility of Cumbria to fund.

Discuss with your Manager/ Advanced Practitioner on a case by case basis and seek Legal advice as necessary

(para 112 to 115 of the DoH Guidance) (Care Act Statutory Guidance Annex H5 pages 475-476)

[Back to top](#)

Is the person a 'carer' living IN Lancashire?

Is the 'cared for' individual being funded or living in another Local Authority

If the carer lives in Lancashire but the 'cared for' person lives in another Local Authority area then that Local Authority will also be responsible for the carers assessment, carers eligibility decision and for the provision of carers support services as per that Local Authorities procedures (para 137 of the DoH Guidance) (see Care Act Statutory Guidance Chapters 19.6)

[Back to top](#)

Is the 'cared for' individual being funded by Lancashire County Council or living in Lancashire

(see Care Act Statutory Guidance Chapters 19.6)

If the carer and the 'cared for' both live in Lancashire then the carer is the responsibility of Lancashire County Council for assessment, eligibility decision and for the provision of carers support. Unless a cared for person has relocated from another authority with a care package.

If the carer lives in another local authority but the 'cared for' lives in Lancashire, then the carer is the responsibility of Lancashire County Council for the carers assessment, carers eligibility decision and for the provision of carers support as per the Council procedures.

If the 'cared for' lives in another Local Authority but is funded by Lancashire County Council the carer is the responsibility of Lancashire County Council for the carers assessment, carers eligibility decision and for the provision of carers support as per Lancashire County Council procedures.

[Back to top](#)

Is the 'cared for' in receipt of NHS Continuing Health Care

If the 'cared for' would be the responsibility of Lancashire County Council, even though at present they will not be receiving such services, as these are the responsibility of the NHS, then the 'carer' will be the responsibility of Lancashire County Council whether they live in Lancashire or another Local Authority. They will therefore, if required receive the carers assessment, carers eligibility decision and for any provision of carers support as per Lancashire County Council procedures. Please note these services are **for direct services to the carer, NOT** to supplement the package of care being provided to the 'cared for' which is the responsibility of the NHS.

[Back to top](#)

Is the Carer undertaking care for more than one person in 'different' local authorities

(see Care Act Statutory Guidance Chapters 19.8)

Such cases are likely to be rare.

Discuss with you Manager/ Advanced Practitioner on a case by case basis.

Legal advice may need to be sought.

[Back to top](#)

Is the 'cared for' in prison

If the 'cared for' is in a prison in Lancashire, then any request for a carers assessment would be the responsibility of Lancashire County Council.

However, Section 76 of the Care Act that a person caring for an adult in prison has the same rights as a carer under the act. Therefore a staff member of the prison or fellow inmate can assist with some aspects of establishment routine, e.g. assisting an individual to mobilise to the dining table but assistance such as 'personal care' should not be provided by such individuals. Therefore it is very unlikely that a carers assessment would be required.

If a request was made by family member for a carers assessment then Care Act S13(5) would need to be followed. If receiving such a request seek advice from your Manager/ Advanced Practitioner and if necessary seek Legal advice.

(see Chapter 17 of Care Act Statutory Guidance)

[Back to top](#)

Is the person without a settled place of residence?**No Settled Residence:**

If a person has more than one home and divides their time between those homes the Local Authority should try to decide on the facts of the case where the person is ordinarily resident (para 26 DoH guidance)

It will be rare for someone to have no settled place of residence. If a person without settled residence is in urgent need of care and support the local authority in which they are physically resident has a duty to meet that need (para 47 to 50 of the DoH guidance) (Care Act Statutory Guidance para 19.23)

S 18 & S 20 Care Act 2005 states that it is highly likely that a person physically present within Lancashire with no settled residence (prior to moving to Lancashire) would become Ordinarily resident within Lancashire.

A local authority may conclude that a person arriving from abroad is of no settled residence. British citizens returning to England after a period of residing abroad (who had given up their previous home in this country) are entitled to an assessment as soon as they return if they appear to have needs for care and support. A returning British citizen would usually acquire an ordinary residence in the area in which they chose to locate, if their intention was to stay living there for settled purposes. There is no minimum period in which a person has to be living in a particular place for them to be considered ordinarily resident there, because it depends on the nature and quality of the connection with the new place. For more details on British citizens returning to England after a period of living abroad, see Care Act Statutory Guidance Annex H6 page 477.

[Back to top](#)

Does the person live in permanent residential care OUTSIDE of Lancashire?**Is the person self-funding in residential placement outside of Lancashire?**

(para 72 to 76 of DoH guidance)

A person who moved to permanent residential care under a private agreement will usually be ordinarily resident in the area where the residential home is based, even if Lancashire gave advice and some information prior to a move into the residential placement.

If Lancashire County Council funded the first 12 weeks of the placement under the property disregard rules the person may still acquire ordinary residence in the new area (para 84 to 86 of DoH Guidance). Care Act Statutory Guidance (Annex H3, page 472) advises this would occur when an individual becomes self-funding, this includes declining other possible funding assistance from the originating (Lancashire) authority, such as a Deferred Payment Agreement.

During the 12 week disregard period, an authority (Lancashire) should be offering a Deferred Payment Agreement to those who qualify. If the person accepts a deferred payment agreement from Lancashire Local Authority after the 12 week property disregard period then the individual remains the responsibility of Lancashire Local Authority until the Deferred Payment Agreement is concluded (Care Act Statutory Guidance Annex H2, page 471)

If the person did not have capacity to enter into the private arrangement to pay the home fees and in the absence of anyone else Lancashire made the arrangement then the person remains ordinarily resident in Lancashire because we have made arrangements for their accommodation. However, there ought to have been a Best Interests Meeting prior to this and a decision made and evidenced as to why such a move was in the individuals' Best interests.

[Back to top](#)

Is the person being funded by Lancashire County Council in a residential placement outside of Lancashire? (Para 55 to 59 of DoH guidance) (see Care Act Statutory Guidance pages 346 - 348)

If Lancashire County Council has made arrangements for the provision of residential accommodation the person is deemed to be ordinarily resident in the area where they were ordinarily resident immediately before the residential accommodation was provided. The host Local Authority should be informed that we are placing someone in their area. Lancashire County Council will continue to be the responsible Authority.

If the person chooses to leave residential accommodation a new ordinary residence decision will be made depending on the facts of their new situation, if it is a move to alternative 'specified accommodation' the originating authority would remain responsible for the person- this would be the same if a best Interests decision has made.

If the person is detained under section 3 of the Mental Health Act and becomes entitled to s117 aftercare then the Local Authority where the person was resident immediately prior to the Section 3 admission will become responsible for their aftercare (para 179 to 189 DoH guidance)

Any other needs outside S117 Aftercare would remain the responsibility of Lancashire County Council (the 'first') authority.

[Back to top](#)

Is the person being funded by another Local Authority?

(see Care Act Statutory Guidance Chapters 19 & 20)

This person is ordinarily resident in the area of the funding authority. However if they want to move to a 'non-specified' community placement in Lancashire we may have responsibility for them in the future and should be involved in an assessment of their social care needs. (refer to Care Act Continuity of Care protocols).

If they want to move to a residential or 'specified accommodation' placement in Lancashire and require Local Authority funding then the existing funding authority (first authority) where the person lives or lived should arrange that placement.

[Back to top](#)

Is the person in short term residential care?

The decision on Ordinary residence will depend on where they were living prior to the short term placement combined with information about their current funding arrangements and intentions for the future.

[Back to top](#)

Is/was the residential placement being funded by NHS Continuing Health Care?

- If placement was made on or before 18th April 2010 – possibly seek Legal advice (these cases are determined on a case by case basis) (para 115b)

-if placement was after 19th April 2010 then, if the NHS was funding the residential or 'specified accommodation' placement but following a review the person is no longer entitled to free NHS Continuing Health Care they will be deemed to be ordinarily resident in the Local Authority Area where they were ordinarily resident immediately prior to being provided with NHS Continuing Health Care. (para 112 to 115 of the DoH Guidance) (Care Act Statutory Guidance Annex H5 pages 475-476)

[Back to top](#)

Is/was the placement funded under the Children's Act 1989? (Para 138 to 158 DoH Guidance)

If the person is a young person placed in residential accommodation out of area as a child under the Children's Act 1989 then the starting presumption is that they acquire ordinary residence in the area of the placing local authority, however this is not always the case it depends on the facts and such presumption can easily be rebutted. Consider how long has the person lived in Lancashire, what is their intention for the future, what connections if any do they retain in the placing authority area, (paragraphs 138 to 158 of the National Guidance apply).

For example when a young person aged 18 or over who may be entitled to leaving care provisions, provided by the placing authority under the Children Act 1989 Act. As leaving care services do not include accommodation (with the exception of vacation accommodation if attending college or university and accommodation that is provided in exceptional circumstances). If a former relevant child has been placed out of area as a looked after child, and wishes to remain in this area on reaching the age of 18, they may then be found to be ordinarily resident Lancashire. In this situation, their accommodation would be provided by Lancashire but the provision of their leaving care would remain the responsibility of the local authority that had responsibility for them under the 1989 Act.

Please note, the Local Authority responsible for leaving care services will remain that in which the young person is Ordinary Resident for the purposes of the Children's Act.

[Back to top](#)

Is the person in hospital OUTSIDE of Lancashire?**Was the person living in Lancashire prior to the hospital admission?**

If the person was living in Lancashire previously and intends to return to Lancashire on discharge (even after a lengthy stay in hospital) they will most likely be ordinarily resident in Lancashire.

If a person is to be discharged from hospital to residential or 'specified' accommodation outside of Lancashire arranged by this Local Authority then we will retain funding responsibility for that person – unless they are self-funders (para 60 to 65 of the DoH Guidance) and would not be entitled to the 12 week disregard or a Deferred Payment Agreement.

If there is a dispute about the ordinary residence of a patient requiring discharge see (para 159 to 166 of the DoH Guidance), Also see Care Act Sections 39-41, Regulations and Statutory Guidance Chapter 19 and Annexes H1-H9.

[Back to top](#)

Was the person of no settled residence prior to their admission to hospital?

The person will usually be deemed to be ordinarily resident in the place where the hospital is. (para 162 of the DoH Guidance), also see Care Act Statutory Guidance Chapter 19 para 19.22-19.24 and Annex H9 page 488

If there is a dispute about the ordinary residence of a patient requiring discharge see (para 159 to 166 of the DoH Guidance), also see Care Act Statutory Guidance paras 19.53-19.66 and Annex H9 page 488

[Back to top](#)

Was the person living away from Lancashire prior to the hospital admission but now wants to move to Lancashire of their own volition.

Where a person has decided that they want to move to Lancashire on discharge to a 'non-specified' community placement (for example to be closer to family) to move to Lancashire it is likely they will become ordinarily resident in Lancashire and we should undertake a social care assessment for a 'non-specified' community placement – as long as the individual had the capacity to make such decisions.

However if the person will be moving to a residential or 'specified accommodation' placement the person will be deemed for the purpose of arranging that placement to be ordinarily resident in the area where they were living immediately before admission to hospital (para 60 to 65 of the DoH guidance). If the person self-funds the placement they will become ordinarily resident in Lancashire, if they do qualify for the 12 week disregard or Deferred Payment Agreement from the 'first' Local Authority.

If there is a dispute about the ordinary residence of a patient requiring discharge see (para 159 to 166 of the DoH Guidance), Also, section 40/41 care Act 2005 and seek legal advice, if required and prior to any dispute discussions taking place with the other authority.

If a best interest decision has been made regarding a change of location, then this means that the person lacks capacity to make decisions in this area. Paragraph 19.21 of the statutory guidance and the recent Cornwall case will be considered. The supreme court ruling might be challenged but it is good law at the time of writing this policy. A person who lacks the capacity to make decisions around residence "cannot voluntarily adopt a place of ordinary residence".

[Back to top](#)

Is the person subject to s117 Mental Health Act 1983?

If the person is detained under a qualifying section of the MHA 1983 (i.e. section 3, 37, 45A, 47 and 48) they will become subject to s117 after-care when they leave hospital, which may not be the same time as when they are discharged from detention, and the Local Authority where the person was immediately resident prior to their detention will become responsible for their aftercare (para 179 to 189 DoH guidance)

Any other needs outside S117 Aftercare would remain the responsibility of their originating (first) authority. However, this is a continuing duty until both Health and Social Services are satisfied that the individual no longer has a need of services (s117(2)) MHA 1983. S 117(6) introduces a definition of aftercare services for the first time. The effect of s39(4) is that if aftercare services under s117 includes provision of accommodation, the individual does not acquire the Ordinary residence in the area where he has been provided with that accommodation- if different from his existing place of Ordinary residence.

Note that

- if a person is discharged on a Community Treatment Order and that CTO is then revoked and the person recalled to hospital the original detention is re-instated as though the person had never been a community patient so residence is established by looking at where the person resided at the point they were originally detained (not where they resided during the CTO)

- if a person is discharged on leave of absence under s17 the patient can be recalled under the same authority to detain from which they were granted leave so residence is established by looking at where the person resided at the point they were originally detained (not where they resided during the s17 leave)

[Back to top](#)

Is the person receiving S117 aftercare OUTSIDE of Lancashire?**Is the s117 aftercare being funded by Lancashire County Council or by another Local Authority or by a Health Authority?**

Once entitlement to s117 after-care is established responsibility rests with the same Local Authority even if the person moves to a new area. There are a few exceptions to this, contact legal if you are uncertain.

The s117 responsibility is re-considered if the person is re-detained under a provision of the 1983 Act. **However**

- if a person is discharged on a Community Treatment Order and that CTO is then revoked and the person recalled to hospital the original detention is re-instated as though the person had never been a community patient so residence is established by looking at where the person resided at the point they were originally detained (not where they resided during the CTO)

- if a person is discharged on leave of absence under s17 the patient can be recalled under the same authority to detain from which they were granted leave so residence is established by looking at where the person resided at the point they were originally detained (not where they resided during the s17 leave)

The Authority where the person was living immediately prior to the most recent detention is responsible for the s117 care, even if the person does not return to live in that area. (para 182 to 189 of the DoH guidance)

Any other needs outside S117 Aftercare would remain the responsibility of their originating (first) authority.

[Back to top](#)

S117 and Prisons

Where prisoners have been detained under s47 and s48 of MHA 1983 and transferred back to prison their S117 aftercare should be dealt with in the same way as it would be in the community apart from any provisions that are disapplied in custodial settings such as direct payments and choice of accommodation. S117 (3) applies to determine which is the responsible local authority

Therefore if the individual was in a Lancashire Prison when detained they will remain the responsibility of Lancashire County Council for S117 after care **(only)** when moving to another area. For example this could be on discharge from Secure Hospital to an open prison/ accommodation outside Lancashire, then Lancashire County Council would need to meet any S117 aftercare needs (but only these needs, not physical care needs, which would be the responsibility of the area of the prison or the individuals settled residence).

There is a s75 agreement in place between the Local Authority and LCFT to facilitate any required needs of prisoners in Lancashire. Any queries will need to take into consideration of the s 75 agreement.

[Care and Support Statutory Guidance Page 322 Chapter 17.6.]

[Back to top](#)

Is the person in prison, approved premises or a similar establishment due to imposed bail conditions in criminal proceedings OUTSIDE of Lancashire?

Prisoners etc. (Care Act Section 76(1), Care Act Statutory Guidance Oct 2014 Chapter 17, DoH Ordinary Residence Guidance Oct 2013 para 107 to 111):

The Care Act highlights that people in custody or custodial settings who have needs for care and support should be able to access the care they need, just like anyone else. Adults detained or residing in a custodial setting are treated as if they were ordinarily resident in the area where the custodial setting is located i.e. if the prison etc. is in Manchester for example then Manchester Council would be responsible whilst resident. The individual in such settings is entitled to all other aspects of the health and care systems i.e. consideration of NHS Continuing Health, unless prohibited by Acts, Regulations or Guidance.

If an individual is transferred to another custodial establishment in a different local authority area i.e. no longer in Manchester for example, the responsibility for care and support will transfer to the new area/ Local Authority. In these situations Continuity of Care (Care Act Statutory Guidance Section 20) processes should be followed if possible. In some circumstances Local Authorities may not be informed of a prisoners pending transfer and therefore can only undertake liaison with previous authority after transfer, however the provision of appropriate care and support needs to be maintained.

On being discharged from prison, approved premises etc. if the individual is requiring care and support each case must be considered individually having regard to where the person lived prior to going into prison and where they want to live on discharge. It is likely you will need to seek Legal advice. Any immediate or urgent needs should be met whilst seeking Legal clarification

If the person needs residential accommodation it might be possible to argue that this should be arranged by the Local Authority where the person lived prior to entering prison. It is likely you will need to seek Legal advice. Any immediate or urgent needs should be met whilst seeking Legal clarification. Paragraph 17.55 of the Statutory Guidance as it makes it clear that the deeming provisions in s 39 Care Act 2014 do not apply to people leaving prison. Therefore, the newly released prisoners Ordinary Residence is not deemed to be the local Authority area in which they resided before their imprisonment.

The statutory guidance acknowledges that working out the OR of a newly released prisoner is not straightforward- as it might not be possible for the offender to return to their previous area.

[Back to top](#)

S117 and Prisons (see section regarding person receiving S117 aftercare)

[Back to top](#)



Is the person living in a community setting (in a 'Specified Accommodation' which can include Supported Living or adult/shared lives placement) OUTSIDE of Lancashire?

Is the care and support plan being funded by another Local Authority?

(see The Care and Support (Ordinary Residence) (Specified Accommodation) Regulations 2014)

The person is most likely ordinarily resident of the Local Authority that is currently funding the placement.

If the person is currently living in a '**specified accommodation**' setting even with a tenancy and wishes to move to another '**specified accommodation**' settings the Local Authority currently funding the placement is likely to be responsible.

If the person is making **plans to move to a residential placement in Lancashire** which needs to be arranged by a Local Authority then the Local Authority where the person is currently ordinarily resident or the authority currently funding the individual would be responsible (Para 55 to 50 of the DoH guidance)

If the person is making **plans to move to a 'non-specified' community placement in Lancashire** of their own volition then the council need to be aware of the move and assessment and care planning process as the person may become ordinarily resident in Lancashire in the future. Once made aware of this the council should instigate the Continuity of Care protocols

[Back to top](#)

Is the care and support plan being funded by Lancashire County Council?

(Care Act Statutory Guidance Chapters 19 & 20)

Lancashire County Council will remain responsible for the care and support of the individual whilst they remain in a '**specified accommodation**' setting. If the individual needs to move to an alternative 'specified accommodation' outside or within Lancashire, we (the council) will remain responsible for these transfers.

If the person is requiring a **residential placement** in current area or is considering returning to residential placement in Lancashire, then we (the council) remain responsible for arranging and funding the placements.

Should the individual be able to move to a '**non-specified**' accommodation setting **within** Lancashire then they will clearly remain an ordinary resident of Lancashire County Council.

Should the individual be able to move to a '**non-specified**' accommodation setting **outside** Lancashire then they will become an ordinary resident in the new (second) Local Authority. In such circumstances the council should instigate the Continuity of Care protocols.

If the person is entitled to s117 aftercare see the relevant section of this flow chart above

[Back to top](#)

Is/was the support plan being funded by NHS Continuing Health Care?

If the NHS was funding the placement, which was/is a '**specified accommodation**' setting, but following a review the person is no longer entitled to free NHS Continuing Health Care they will be deemed to be ordinarily resident in the Local Authority Area where they were ordinarily resident immediately prior to being provided with NHS Continuing Health Care. (para 112 to 115 of the DoH Guidance) (Care Act Statutory Guidance Annex H5 pages 475-476)

Therefore if they previously lived in Lancashire and were moved into another Local Authority under NHS CHC they would revert to being a Lancashire County Council funding responsibility from the date when they no longer meet.

If the individual lives in '**non-specified**' accommodation setting and they intend to remain in their current location, then they are likely to become the responsibility of the current Local Authority.

[Back to top](#)

Is the person living in a community setting (in a 'Non-Specified Accommodation' placement) OUTSIDE of Lancashire?**Is the care and support plan being funded by another Local Authority**

(Care Act Statutory Guidance Chapters 19 & 20)

This person is likely to become ordinary resident of the Local Authority where they reside – unless they lack the capacity to make any decisions regarding residence.

If the person is planning to move into 'non-specified' accommodation in Lancashire of either their own volition or because of a best interest decision has determined that it is in their best interest to move to Lancashire, then we would need to follow the Continuity of Care protocols. This would include ideally undertaking an assessment prior to the individual moving into Lancashire.

[Back to top](#)

Is the care and support plan being funded by Lancashire

If the individual is making plans to move to into an 'non-specified' accommodation placement then Lancashire County Council need to contact the Local Authority in which the accommodation is situated and undertake the Continuity of Care protocols

[Back to top](#)

Is/ was the care and support plan being funded by NHS Continuing Health Care

- If the individual had chosen to move to another authority (and had the capacity to make such a decision), as the individual is in non-specified accommodation the individual would become the responsibility for services/ funding, (if remaining in that environment and no longer meeting the threshold for free NHS Continuing Health Care), of the local authority of that geographical area.

- If however on no longer meeting the threshold for NHS Continuing Healthcare but at that time would require placement in 'specified accommodation' then the individual is the responsibility of the authority where they were resident before meeting NHS Continuing Healthcare.

For example if they had been resident in Lancashire and had moved to Manchester to be with relatives, if dropping out of NHS Continuing Healthcare and immediately requiring 'specified accommodation' then this will be the responsibility of Lancashire County council to fund.

Discuss with your Manager/ Advanced Practitioner on a case by case basis and seek Legal advice as necessary.

(para 112 to 115 of the DoH Guidance) (Care Act Statutory Guidance Annex H5 pages 475-476)

[Back to top](#)

Is the person a 'carer' living OUTSIDE Lancashire?**Is the 'cared for' individual being funded by or living in another Local Authority**

(Care Act Statutory Guidance Chapters 19.6)

If the carer lives in Lancashire but the 'cared for' lives in another Local Authority, and is not funded by Lancashire County Council, then the carer is the responsibility of the authority where the 'cared for' lives or the funding authority.

If the carer lives **outside** of Lancashire but the 'cared for' person lives in Lancashire but is funded by another Local Authority that Authority will also be responsible for the carers assessment, carers eligibility decision and for the provision of carers support services as per that Local Authorities procedures.

If the carer and individual live outside Lancashire and Lancashire County Council are not funding the care/placement, then neither 'cared for' or carer are the responsibility of Lancashire

[Back to top](#)

Is the 'cared for' individual being funded by Lancashire County Council or living in Lancashire

(Care Act Statutory Guidance Chapters 19.6)

If the carer lives **outside** of Lancashire but the 'cared for' person lives in Lancashire then Lancashire County Council will also be responsible for the carers assessment, carers eligibility decision and for the provision of carers support services as per our procedures

If the carer lives **outside** of Lancashire and the 'cared for' lives outside of Lancashire but is funded by Lancashire County Council, both carer and cared for are the responsibility of Lancashire for assessment, eligibility decisions and funding as per our procedures.

[Back to top](#)

Is the 'cared for' in receipt of NHS Continuing Health Care

If the 'cared for' person would be considered and 'ordinary resident' of Lancashire, even though at present they will not be receiving such services, as these are the responsibility of the NHS, then the 'carer' will be the responsibility of Lancashire County Council whether they live in Lancashire or another Local Authority. They will therefore, if required receive the carers assessment, carers eligibility decision and for any provision of carers support as per Lancashire County Council

procedures. Please note these services are **for direct services to the carer, NOT** to supplement the package of care being provided to the 'cared for' which is the responsibility of the NHS.

Is the Carer undertaking care for more than one person in 'different' local authorities

(Care Act Statutory Guidance Chapters 19.8)

Such cases are likely to be rare.

Discuss with you Manager/ Advanced Practitioner on a case by case basis.

Legal advice may need to be sought.

[Back to top](#)

Is the 'cared for' in prison

If the 'cared for' is in a prison outside Lancashire, then any request for a carers assessment would be the responsibility of the geographical area where the prison is situated. Therefore any request for such an assessment needs to be re-directed to the appropriate local authority who will have agreement how such assessment are undertaken.

However, Section 76 of the Care Act that a person caring for an adult in prison has the same rights as a carer under the act. Therefore a staff member of the prison or fellow inmate can assist with some aspects of establishment routine, e.g. assisting an individual to mobilise to the dining table but assistance such as 'personal care' should not be provided by such individuals. Therefore it is very unlikely that a carer's assessment would be required.

Please note there is a s75 agreement between the Local Authority and LCFT around providing some mental health services to prisoners.

(see Chapter 17 of Care Act Statutory Guidance)

[Back to top](#)

Is the person without a settled place of residence?**No Settled Residence:**

If a person has more than one home and divides their time between those homes the Local Authority should try to decide on the facts of the case where the person is ordinarily resident (para 26 DoH guidance)

It will be rare for someone to have no settled place of residence. If a person without settled residence is in urgent need of care and support the local authority in which they are physically resident has a duty to meet that need (para 47 to 50 of the DoH guidance) (Care Act Statutory Guidance para 19.23)

A local authority may conclude that a person arriving from abroad is of no settled residence. British citizens returning to England after a period of residing abroad (who had given up their previous home in this country) are entitled to an assessment as soon as they return if they appear to have needs for care and support. A returning British citizen would usually acquire an ordinary residence in the area in which they chose to locate, if their intention was to stay living there for settled purposes. There is no minimum period in which a person has to be living in a particular place for them to be considered ordinarily resident there, because it depends on the nature and quality of the connection with the new place. For more details on British citizens returning to England after a period of living abroad, see Care Act Statutory Guidance Annex H6 page 477.

[Back to top](#)

5 DOCUMENT HISTORY

RELATED DOCUMENTS	
OTHER RELATED DOCUMENTS	<ul style="list-style-type: none"> • Continuity of Care Policy • Cross Border Placements Policy
LEGISLATION OR OTHER STATUTORY REGULATIONS	<ul style="list-style-type: none"> • The Care Act 2014 - Part 1 Sections 39 to 41 • The Care and Support (Disputes Between Local Authorities) Regulations 2014. • The Care and Support (Ordinary Residence) (Specified Accommodation) Regulations 2014 • Chapter 19 Ordinary residence, Statutory Guidance October 2014 • ORDINARY RESIDENCE: Guidance on the identification of the ordinary residence of people in need of community care services, England • Mental Capacity Act 2005

Adult Social Care Policies and Procedures

CARE ACT INDEPENDENT ADVOCACY

WARNING! Please note if the review date shown below has passed this procedure may no longer be current and you should check the PPG E Library for the most up to date version

Contents

CARE ACT INDEPENDENT ADVOCACY	1
POLICY VERSION CONTROL	2
1. POLICY STATEMENT.....	3
2. KEY DEFINITIONS AND PRINCIPLES APPLICABLE TO THIS POLICY	4
2.1. Advocacy.....	4
2.2. Judging Substantial Difficulty	4
2.3. Who is an 'appropriate individual?'	4
2.4. Exceptions.....	5
3. PROCEDURES.....	5
4. FLOW CHARTS/ DIAGRAMS OR EXAMPLES.....	7
5. DOCUMENT HISTORY	7

POLICY VERSION CONTROL

POLICY NAME	Care Act Independent Advocacy		
Document Description	This document is to ensure that Council workers fully understand their duties in relation to the provision of Care Act 2014 independent advocacy and to assist them in carrying out these duties.		
Document Owner 1) Officer, position and contact details			
Document Author	Linda Thomas	Date	2 November 2015
Status (Draft/Live/Withdrawn)	Draft	Version	0.1
Last Review Date		Next Review Due date	
Approved by	Tony Pounder	Position	Director Services Adult
Signed		Date Approved	

DOCUMENT CHANGE HISTORY			
Version No	Date	Issues by	Reason for change

1. POLICY STATEMENT

The Care Act places a duty on a local authority to arrange an independent advocate for all applicable adults. It applies equally to individuals with care and support needs and carers with support needs. It also applies to children who are approaching the transition to adult care and support, when a child's needs assessment is carried out, and when a young carer's assessment is undertaken.

There is also a separate duty to arrange an independent advocate for adults who are subject to a safeguarding enquiry or Safeguarding Adults Review (SAR).

Local authorities **must** arrange an independent advocate to facilitate the involvement of a person in their assessment, in the preparation of their care and support plan and in the review of their care plan, as well as in safeguarding enquiries and SARs if two conditions are met:

1. if an independent advocate were not provided then the person would have substantial difficulty in being fully involved in these processes
2. and, there is no appropriate individual available and willing to support and represent the person's wishes who is not paid or professionally engaged in providing care or treatment to the person or their carer.

The role of the independent advocate is to support and represent the person and their views (where the person is unable to do so effectively) and to facilitate their involvement in the key processes and interactions with the local authority and other organisations as required for the safeguarding enquiry or SAR.

Once a person has contacted the local authority, or come to the local authority's attention as a result of a safeguarding concern, the individual must be actively involved in identifying their needs through assessment, in developing their care and support plan, and in leading their care reviews, where relevant, and being involved in any safeguarding enquiry or SAR.

The aim of the Care Act duty to provide advocacy is to enable people who have 'substantial difficulty' in being involved in these processes to be supported in that involvement as fully as possible, and where necessary to be represented by an advocate who speaks on their behalf.

The Equality Act 2010, requires that reasonable adjustments should be made to ensure that disabled people have equal access to information and advice services. Provision of such adjustments, information in different formats for example, may reduce or remove a substantial difficulty a person may have in being involved. The ultimate aim is for people's wishes, feelings and needs to be at the heart of the assessment, care planning and review processes. This needs to be just as true for those who are the subject of a safeguarding enquiry or safeguarding adult review (SAR).

Local authorities must involve people in decisions made about them and their care and support or where there is to be a safeguarding enquiry or SAR. Involvement requires the local authority helping people to understand how they can be involved,

how they can contribute and take part and sometimes lead or direct the process. People should be active partners in the key care and support processes of assessment, care and support and support planning, review and any enquiries in relation to abuse or neglect. No matter how complex a person's needs, local authorities are required to involve people, to help them express their wishes and feelings, to support them to weigh up options, and to make their own decisions.

The duty to involve applies in **all settings**, including for those people living in the community, in care homes or, prisons. However the Section 68 duty for advocacy in relation to a safeguarding enquiry and SAR would not apply to prisoners.

Local authorities must form a judgment about whether a person has substantial difficulty in being involved with these processes. If it is thought that they do, and that there is no appropriate individual to support and represent them for the purpose of facilitating their involvement, then the local authority must arrange for an independent advocate to support and represent the person.

Many of the people who qualify for advocacy under the Care Act will also qualify for advocacy under the Mental Capacity Act 2005. The same advocate can provide support as an advocate under the Care Act and under the Mental Capacity Act. This is to enable the person to receive seamless advocacy and not to have to repeat their story to different advocates. Under whichever legislation the advocate providing support is acting, they should meet the appropriate requirements for an advocate under that legislation.

Therefore to fulfil its duty under section 67 and 68 of the Care Act, the Council will deliver, working with its statutory, voluntary and private sector partners, an independent advocacy service relating to care and support that is relevant, coherent, timely and sufficient.

The Council will make all reasonable adjustments to ensure that all disabled people have equal access to its independent advocacy service in the eligibility decision in line with the Equality Act 2010.

The geography and population of Lancashire is diverse and our Adult Social Care Policies and practice will aim to deliver services and supports that are representative of the communities in which we work.

The Council will follow the Care Act and other relevant legislation, policies and guidance to ensure our practice is of high quality and legally compliant. Where our customers or those we come into contact with wish to challenge or raise concerns in regard to our independent advocacy decisions, the Council's complaints procedures will be made available and accessible.

2. KEY DEFINITIONS AND PRINCIPLES APPLICABLE TO THIS POLICY

2.1. Advocacy

This means supporting a person to understand information, express their needs and wishes, secure their rights, represent their interests and obtain the care and support they need.

2.2. Judging Substantial Difficulty

The Care Act defines four areas where people may experience substantial difficulty. These are:

- understanding relevant information
- retaining information
- using or weighing information
- communicating their views, wishes and feelings.

If an individual is unable to do one or more of these areas they would be considered to have substantial difficulty.

2.3. Who is an 'appropriate individual?'

Staff must consider whether there is an appropriate individual who can facilitate a person's involvement. The Act states that an appropriate individual **cannot be someone**:

- already providing care or treatment to the person in a professional capacity or on a paid basis
- the person does not want that individual to support them
- who is unlikely to be able to, or available to, adequately support the person's involvement
- implicated in an enquiry into abuse or neglect or who has been judged by a safeguarding adult review to have failed to prevent abuse or neglect.

The role of an 'appropriate individual' under the Care Act is potentially fuller and more demanding than that of an individual with whom it is 'appropriate to consult' under the Mental Capacity Act (MCA). Under the Care Act the appropriate individual's role is to **facilitate** the person's involvement, not merely to consult them and make decisions on their behalf.

It may not be clear at the point of first contact, or at an early stage of the assessment, whether there is someone appropriate to assist the person in engaging. As a result, an advocate may be appointed only for it to be discovered later that there is an appropriate person available. The appointed advocate can at that stage 'hand over' to the appropriate individual. Alternatively, the member of staff may agree with the person, the appropriate individual and the advocate that it would be beneficial for the advocate to continue their role, although this is not a specific requirement under the Care Act. Equally, it is possible that the member of staff will consider someone appropriate who may then turn out to have difficulties in supporting the person to be involved in the process. At that point arrangements for an independent advocate must be made.

2.4. Exceptions

There are times when an independent advocate should be provided for a person who has substantial difficulty even though they have an appropriate individual to support them. These are:

- where a placement is being considered in NHS-funded provision in either a hospital (for a period exceeding four weeks) or in a care home (for a period of eight weeks or more), and it would be in the best interests of the individual to arrange an advocate
- where there is a disagreement between the local authority and the appropriate person whose role it would be to facilitate the individual's involvement, and the council and the appropriate person agree that the involvement of an independent advocate would be beneficial to the individual.

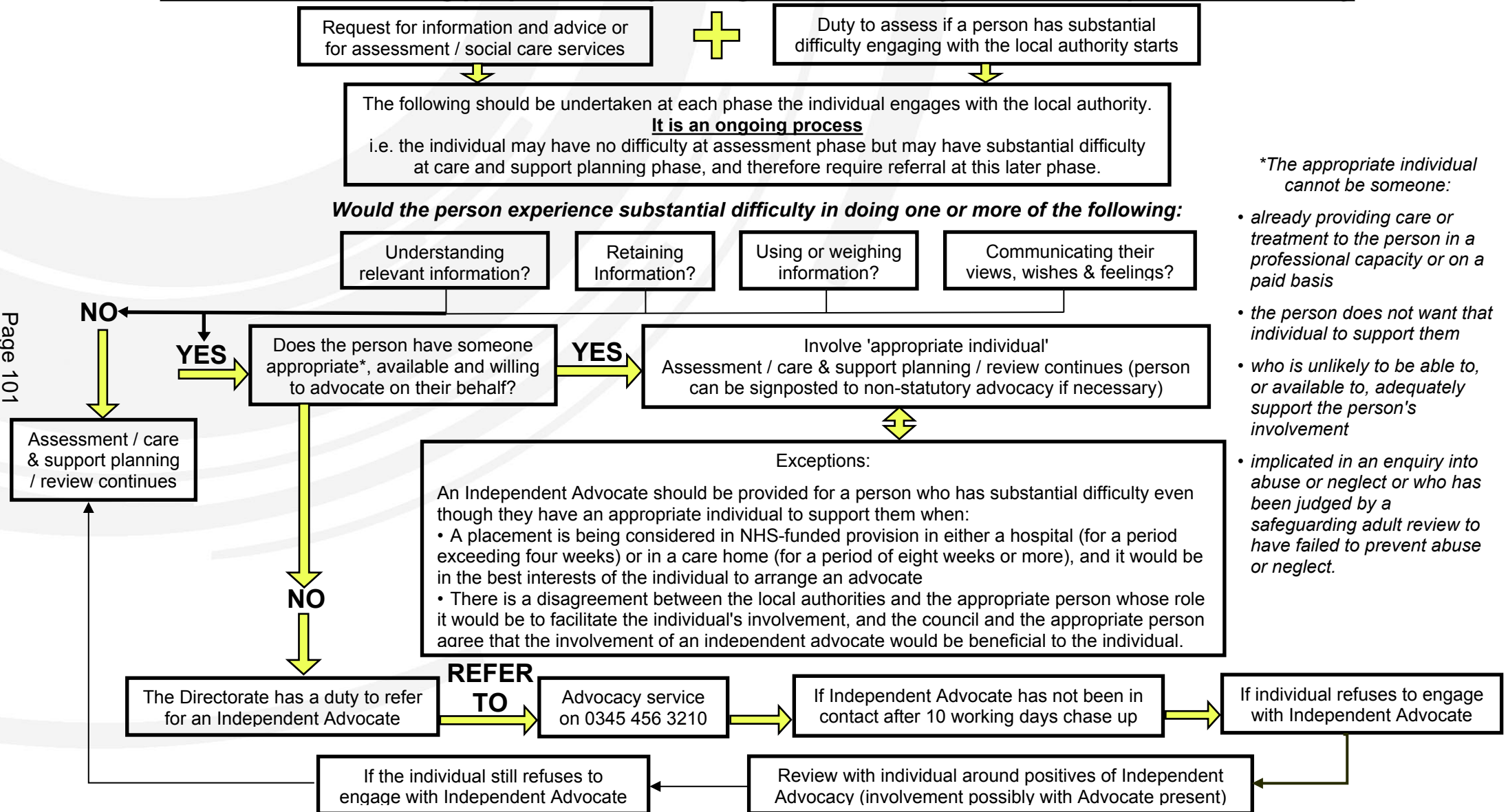
3. PROCEDURES

- a) Council staff will ensure from initial contact and throughout interactions with an individual or carer, that the person is enabled to be fully involved in processes. Staff will ensure that any reasonable adjustments as per the Equality Act 2010 are made to enable an individual or carer to be fully involved in processes.
- b) Following these reasonable adjustments, Council staff will judge if an individual or carer continues to have substantial difficulty with the various stages of social care processes. These include:
 - a needs assessment
 - a carer's assessment
 - the preparation of a care and support or support plan
 - a review of a care and support or support plan
 - a child's needs assessment
 - a child's carer's assessment
 - a young carer's assessment
 - a safeguarding enquiry
 - a safeguarding adult review
- c) If the adult does not have an appropriate individual to assist them, then as per the Care Act **duty** they will advise the adult involved that they **must** refer for an independent advocate to be appointed to offer this assistance.
- d) At each of the steps, it is important that decisions are recorded and actions taken are also recorded. Recording of these decisions should be within systems available to the Council worker for example Liquid Logic assessment documentation, case notes.
- e) Therefore the first step for any Council worker will make a judgement whether the person has 'substantial difficulty' engaging with the process they are to undertake with the individual.

- f) If the answer to the above statement is yes, then consideration needs to be given to any possible reasonable adjustment under the Equality Act 2010, i.e. provision of interpreter.
- g) Once reasonable adjustments have been made, the Council worker will make a judgement whether the person continues to have substantial difficulty engaging with the process they are to undertake with the individual.
- h) If the answer to the above statement is 'yes', then the Council worker will need to consider if the individual has an 'appropriate person' that can facilitate the individual's involvement.
- i) If there is an 'appropriate person' then the Council worker will involve this individual. There is no requirement for an Independent Advocate in these circumstances unless there are 'exceptional circumstances' as above.
- j) If there is **no** 'appropriate person', then the Council worker will advise the individual of the staff member's **duty (must)** to refer for an Independent Advocate. It is important that the Council worker explains the advantages of an Independent Advocate, as this will ensure the individual fully understands their rights and options under the Care Act. Staff member will refer to Advocacy service.
- k) If after 10 working days the Council worker has not had contact from Advocacy Service then then will make contact and ask when this will occur, as it is important that this is not delayed.
- l) If the individual refuses to engage with the Independent Advocate, then the Council worker will review this with the individual. Consideration should be given regarding a joint visit with the Independent Advocate again explaining the advantages of the role to the individual.
- m) If the individual still refuses to engage with the Independent Advocate then Assessment, Care and Support Planning etc. would need to continue.

4. FLOW CHARTS/ DIAGRAMS OR EXAMPLES

Process for determining people who may be eligible for statutory Care Act Independent Advocacy



**The appropriate individual cannot be someone:*

- already providing care or treatment to the person in a professional capacity or on a paid basis
- the person does not want that individual to support them
- who is unlikely to be able to, or available to, adequately support the person's involvement
- implicated in an enquiry into abuse or neglect or who has been judged by a safeguarding adult review to have failed to prevent abuse or neglect.

5. DOCUMENT HISTORY

RELATED DOCUMENTS		
OTHER RELATED DOCUMENTS		<ul style="list-style-type: none">• Wellbeing Policy• Needs Assessment Policy• Eligibility Criteria Policy• Care and Support Planning Policy• Review of Care and Support Plans• Continuity of Care Policy• Cross Border Placements Policy• Safeguarding Policy
LEGISLATION OR OTHER STATUTORY REGULATIONS		<ul style="list-style-type: none">• Care Act Section 67 & 68• The Care and Support (Independent Advocacy Support) Regulations 2014• Chapter 7 Independent advocacy Statutory Guidance

Report to the Cabinet Member for Adult and Community Services and Cabinet Member for Children, Young People and Schools

Report submitted by: Head of Service, Policy, Information and Commissioning (Age Well)

Date: 9 March 2016

Part I

Electoral Division affected:
All Divisions

Approval of Revised Direct Payment Policy

(Appendix 'A' refers)

Contact for further information:

Sue Knox, 01772 532078, Manager - Policy, Information & Commissioning Age Well
sue.knox@lancashire.gov.uk

Executive Summary

This report outlines a revised Direct Payments Policy for adults and children and young people and the requirements for a revised Direct Payments Policy following the introduction of the Care Act 2014 and Children and Families Act 2014. It is proposed that previously there were two separate policies for Adults (2013) and Children and Young People (2007) which have now been amalgamated and updated in line with the Care Act 2014 and the Children & Families Act 2014.

This is deemed to be a Key Decision and the provisions of Standing Order 25 have been complied with.

Recommendation

The Cabinet Member for Adult and Community Services and the Cabinet Member for Children, Young People and Schools are recommended to:

- (i) approve the Direct Payments Policy, and
- (ii) agree that any fundamental changes to the policy and procedures should be presented to the Cabinet Members for approval, and to authorise the Director of Adult Services and the Director of Children Services, in consultation with the Director of Governance, Finance and Public Services, to approve all other future amendments to the policy, as well as any revisions to the associated procedures and guidance to support the implementation of the policy.

Background and Advice

Direct payments have been available since the mid 1990's to adults with social care needs and since 2001 to children and young people with disabilities. Direct Payments were introduced under the Direct Payments Act 1996 and the Carers and Disabled Children Act 2000 as a result of disability rights campaigns to gain choice and control over their lives. They remain the Government's preferred method of providing personalised care and support.

If a person has care needs, is eligible for support and has been given a personal budget, instead of asking the local authority to arrange that care for them they can request that the budget is given to them as a direct payment. With this they can either employ staff or buy in services, the benefit is that they can be in complete control of how their care needs are met, but of course along with this choice comes responsibilities and this policy sets out those responsibilities. Currently there are 4232 adults and 409 children who receive direct payments.

Previously there were two separate policies for Adults (2013) and Children and Young People (2007) which have now been amalgamated and updated in line with the Care Act 2014 and the Children & Families Act 2014. The purpose of one policy is to make access, implementation and updating of the policy easier and more transparent for all relevant parties.

The updated policy reflects the changes and extra clarifications in the two pieces of legislation.

The changes that have been included in relation to children and young people are:

- they are now eligible for personal budgets,
- all staff employed by the direct payment recipients have to have a Disclosure and Barring Service (DBS) check,
- no payments can be made to people with parental responsibility.

The primary changes that have been included in relation to adults are:

- where the council think it is necessary, there is an option to pay somebody to oversee complex packages of care;
- the council cannot insist that the budget is taken via a pre-payment card;
- the reviewing process must be a 'light touch' but says new direct payment agreements must be reviewed within six months and then at a yearly interval.

One of the complexities with providing a direct payment is the question of what it can be spent on. The majority of direct payment recipients use it to meet their eligible needs and create good wellbeing outcomes. The new legislation makes it very clear that local authorities should not write lists of what direct payments can be spent on. The direct payment can be spent on anything that meets an eligible social care need and is detailed in the care or support plan.

The updated policy states the direct payment should be spent on items or services that are safe, legal, meet eligible social care needs of the individual and is detailed in the care or support plan. National guidance does allow councils to produce a short

list of what it cannot be spent on such as services that are free of charge from other sources e.g. health, housing, benefits and usual household expenses. This has been included in the policy.

In addition, the County Council currently commissions a Direct Payment Support Service which supports all Direct Payment Recipients (adults and children) and one policy will support the effective delivery of this service. There is currently a procurement exercise underway to commission a new Direct Payment Support Service and the revised policy needs to be in place to coincide with the new contract.

Once the policy has been approved, new procedures and practice guidance will be produced for both adult social care and children's services. All key staff and relevant stakeholders will be trained and briefed on the new policy. These procedures have been developed and will be finalised following approval of the policy and implementation of the new Direct Payment Support Service with the successful provider. We are seeking approval for the Director of Adult Services and Director of Children Services, in consultation with the Director of Governance, Finance and Public Services, to approve all future amendments to the policy and revisions of associated procedures and guidance to support the implementation of the policy going forward.

Fundamental changes to the new policy and associated procedures will however follow the full decision making pathway through to Cabinet Member approval.

Securing this approval of the revised policy not only ensures compliance with legislation and supports operational delivery, it also demonstrates the County Council's commitment to deliver a fair, consistent and transparent offer.

Consultations

Public consultation has not been undertaken as the documents in question are not new presentations but rather revisions to ensure they fully represent the new duties and requirements placed on the local authority under the Care Act 2014 and the Children and Families Act 2014.

Implications:

This item has the following implications, as indicated:

Financial

The revisions have no new financial implications

Legal

The policy has been assessed and approved by the County Council's Legal Services before presentation to Cabinet Members for final approval. The policy will be publically accessible as part of this process with the aim of reducing legal challenge or complaints due to lack of understanding or transparency.

Equality and Diversity

The revised combined policy does not represent a change or reduction of services to existing or new clients. The County Council's Equality and Cohesion team has been consulted and has confirmed that as there are no detrimental impacts to any of the nine protected characteristic groups, a detailed Equality Analysis is not appropriate or needed in this instance. The revised policy seeks to take into account specific requirements of the Care Act 2014 and Children's and Families Act 2014 and at the same time combine the former Adult and Children and Young people policies into one composite policy with no changes/reductions of existing services proposed.

Risk management

If the recommendations are not taken forward, the County Council will not meet its statutory duties under the Care Act 2014 and Children and Families Act 2014 which will result in the County Council being exposed to legal challenge and reputational damage.

List of Background Papers

Paper	Date	Contact/Tel
Direct Payments Policy	26/01/2016	Sue Knox, 01772 532078, Manager - Policy, Information & Commissioning Age Well sue.knox@lancashire.gov.uk

Care Act 2014 –
http://www.legislation.gov.uk/ukpga/2014/23/pdfs/ukpga_20140023_en.pdf

Children and Families Act
(2014)
<http://www.legislation.gov.uk/ukpga/2014/6/contents/enacted>

Reason for inclusion in Part II, if appropriate

N/A.

Adult & Children Social Care Policies and Procedures

Direct Payments Policy

WARNING! Please note if the review date shown below has passed this procedure may no longer be current and you should check the PPG E Library for the most up to date version

POLICY VERSION CONTROL

POLICY NAME	Direct Payments Policy		
Document Description	This document has updated the Direct Payments Policy in respect of the Care Act 2014 and the Children's & Families Act 2014		
Document Owner 1) Officer, position and contact details			
Document Author	Sue Knox	Date	26 January 2016
Status (Draft/Live/Withdrawn)	Draft	Version	0.1
Last Review Date		Next Review Due date	
Approved by	Tony Pounder	Position	Director of Adult Services
Signed		Date Approved	

DOCUMENT CHANGE HISTORY			
Version No	Date	Issues by	Reason for change

	Policy Version Control	
1	Policy Statement	4
2	Purpose	4
3	Definitions	4
4	Legal Context	4
5	Associated Policies	5
6	Informing people, promoting choice and advocacy	5
7	Duty to offer	5
8	Consideration of Request	5
9	Who can have a Direct Payments	5
10	16 & 17 Year Old Young People with a Disability as Recipients of Direct Payments	6
11	For a young person moving from child to adult care	6
12	Who cannot have Direct Payment.	7
13	Consent and people with the mental capacity	7
14	Adults without capacity	7
15	Carers with Parental Responsibility as Recipients of Direct Payments	7
16	Transitions	7
17	Nominated Person	7
18	Appointing an 'authorised person'	8
19	Conditions for receiving direct payments	8
20	Declining Direct Payments	9
21	Using Direct Payments	9
22	What can direct payments NOT be used for?	9
23	Carer Direct Payments	10
24	Short respite breaks (Adults)	10
25	Short respite breaks (Children and Young People)	10
26	NHS Continuing Health Care & Personal Health Budgets	10
27	Purchasing from a provider or organisation	11
28	Purchasing services from a self-employed worker	11
29	Paying someone to manage your Direct Payment	11
30	Becoming an employer	11
31	Employing relatives living in the same household to provide care	12
32	Employing friends or relatives not living in the same household	12
33	Direct Payments for Adaptations	12
34	Direct Payments for Equipment	12
35	Hospital stays	13
36	Safeguarding Alerts	13
37	Disclosure and Barring Service checks	13
38	Direct Payments Agreement (FIN107)	13
39	Payment & Frequency	13
40	Pre Payments, bank accounts & managed bank accounts	14
41	Cost of Services	14
42	Assessed Financial charge	14

43	Financial monitoring arrangements	14
44	Social Care reviews	14
45	Suspending Direct Payments	15
46	Terminating Direct Payments	15
47	Repayment of Direct Payment monies	16
48	Complaints	16
49	Implementation	16
50	Audit and monitoring compliance	16
51	Review	16
	Appendix 1 - Definition	17
	Appendix – People excluded from Direct Payments	20

1. Policy Statement

- 1.1. Direct payments are monetary payments made to named individuals who request to receive one, to meet some or all of their eligible care and support needs. The legislative context for direct payments is set out in the Care Act 2014, Section 117(2C) of the Mental Health Act 1983 (the 1983 Act), the Care and Support (Direct Payments) Regulations 2014 and the Children and Families Act 2014.
- 1.2. The named individual or person referred to in this policy can be an adult with eligible care needs, their representative, someone with parental responsibility for a disabled child who is eligible for support or a young person between the ages of 16 and 17.
- 1.3. Direct payments have been in use in adult care and support since the mid-1990s and they remain the Government's preferred mechanism for personalised care and support. They provide independence, choice and control by enabling people to commission their own care and support in order to meet their eligible needs.
- 1.4. Direct Payments have been available to support disabled children and young people between the ages of 16 and 17 since 2001 and must safeguard and promote the welfare of the child.
- 1.5. Lancashire County Council will continue to promote and prompt people to consider using a direct payment to get choice and control over their lives.
- 1.6. Direct Payments may only be made with the consent or willingness of the person concerned. When a person consents to receiving direct payments they need to have an understanding of what is involved in managing direct payments and they will be supported to do that. Where a person decides not to receive direct payments the Council will provide or arrange services.
- 1.7. Direct payments should be spent on items or services that are "safe, legal, meets an eligible care and support need and outcomes as detailed in the plan". It should also be proportionate and within the agreed budget and in the case of a child must safeguard and promote the welfare of that child. It must also only be spent meeting the needs of the person identified in the plan.

2. Purpose

- 2.1. The purpose of this policy is to reflect the requirements of 4A(4) Children and Families Act 2014 and Part 1 of the Care Act 2014 which was effective from 1 April 2015, the Care and Support (Direct Payments) Regulations 2014 and the guidance found in the Care and Support Statutory Guidance issued under the Care Act 2014 by the Department of Health in October 2014.

3. Definitions

- 3.1. Definitions of specific terms used within this policy are defined in Appendix 1

4. Legal Context

- 4.1. Policy derives from the following legislation and government guidance:
 - The Care Act 2014 Care and Support (Direct Payments) Regulations 2014 Care and Support Statutory
 - Other relevant legislation includes but is not limited to:
 - Mental Health Act 1983 (MHA) Mental Capacity Act 2005 (MCA) Equalities Act 2010 Human Rights Act 1998 guidance issued under the Care Act 2014 by the Department of Health in October 2014.

- Part 3 of the Children and Families Act 2014
- The SEND Code of Practice (Chapter 2)
- The Special Education Needs (Personal Budgets) Regulations 2014:

5. Associated Policies

5.1. The following documents are closely associated with this policy:

- FIN107 Direct Payments Agreement
- Safeguarding policy
- Support Planning and Review policy
- Finance and Charging policy
- Community Equipment and Adaptations policy
- Children's Policies

6. Informing people, promoting choice and advocacy

- 6.1. The Council will provide universal information about direct payments to raise awareness of direct payments and how they can be used.
- 6.2. When a plan to meet needs or discharge s117 duties under the Mental Health Act 1983 is being developed, people will be advised which of their eligible needs, if any, or after care services may be met / provided through direct payments and offered the option of having them. People will be provided with information about their direct payment rights and responsibilities and how to use and manage them so that they can make an informed decision.
- 6.3. The Council may use a variety of methods to do this from providing fact sheets, describing realistic scenarios or case studies that are similar to the person's situation and use different styles of communication that are tailored to the persons understanding. They will also discuss the option of a direct payment along with others methods of support and offer choices more than once during their interactions with the person. They may refer the person to a Direct Payment support service, advocacy service or a peer support organisation for an independent advice.
- 6.4. People must request direct payments and may opt in or out of direct payment arrangements by notifying the Council. Requests for direct payments are usually made at planning stage but may be made at any other time.
- 6.5. People who appear to be unable to understand their rights and responsibilities in relation to direct payments but do not need to be supported under the Mental Capacity Act and have no other appropriate person to support them will be offered an independent advocate. The advocate will support the person to understand and participate in making a choice on how their care needs are to be met and if they wish to use a direct payment to do this.

7. Duty to offer

- 7.1. Direct Payments must be offered and discussed with people who have eligible social care needs. This will be done during any social care assessment, reassessment or review and offered at planning stage. They can also be requested at any time by the person, parent or young person.
- 7.2. The person, parent of the child or young person in conjunction with their carer must make the decision themselves and make a request for a Direct Payment, it cannot be done by a third party.

8. Consideration of Request

8.1. All efforts will be made to support an individual to receive a Direct Payment if they request one. If there is a reason why one cannot be provided this will be detailed in the individual's assessment and plan. If they wish to challenge this decision they will be referred to the Council's complaints process.

9. Who can have a Direct Payments

9.1. People are eligible to receive their or their child's personal budget as a Direct Payment if:-

- They have been allocated a personal social care estimated budget and are eligible for financial support from the Council.
- They have parental responsibility of a child with a disability and a Framework assessment identifies a need for support.
- In the case of a child they satisfy the Council that the services provided by the direct payments will safeguard and promote the welfare of that child.
- They understand the responsibilities and financial implications of managing a Direct Payment.
- There is no evidence to suggest that a Direct Payment will not be managed appropriately or will not meet a person or child's eligible needs.
- They have the mental capacity to understand the implications or it has been decided as part of a best interest decision under the Mental Capacity Act and a person has been nominated to take on these responsibilities.
- They are not subject to a court order for drug or alcohol treatment programme or other offenders (see appendix 2).

10.16 & 17 Year Old Young People with a Disability as Recipients of Direct Payments

10.1. The option of Direct Payments must be discussed with the young person and those with parental responsibility. Where there is a difference of views between a young person with a disability aged 16 or 17 and his or her parent, provided that the young person has sufficient understanding to make informed decisions, preference should be given to the young person's views.

If a young person is not able to manage a Direct Payment and the young person does not agree with this opinion, the young person should be allocated an advocate. The young person should also be informed of the Complaints Procedure.

10.2. A 16 or 17 year old young person in foster care may be a Direct Payments recipient provided the young person manages the Direct Payment. The foster carer, who will not have Parental Responsibility, cannot receive the payment on behalf of the young person.

11. For a young person moving from child to adult care

11.1. For a person aged 18 and over who was in foster care Direct Payments cannot be used for costs associated with continuing to live with the foster carer. An alternative option to be considered in such a situation would be Shared Lives arrangement.

12. Who cannot have a Direct Payment

12.1. Those who cannot have a Direct Payment include:

- A company or organisation – a direct payment can only be made to a named person who is willing to take in the contractual responsibilities personally
- If a child, a person who does not have parental responsibility e.g. not a foster carer
- Someone who does not consent to having a direct payment
- Someone who a mental capacity assessment deems them not to have the capacity to understand the tasks or responsibilities
- If a risk assessment finds that risks to the person, the employee or the public cannot be reduced to an acceptable level
- Someone who has previously mismanaged their direct payment who has no plan on how they will manage it well this time or there is evidence that they will not use the direct payments detailed in the plan
- People subject to a court order for a drug and alcohol treatment program or similar schemes (Appendix 2)
- Prisoners including those in young offender institutions

13. Consent and people with the mental capacity

13.1. Direct Payments may only be made with the consent or willingness of the person concerned. When a person consents to receiving direct payments they need to have an understanding of what is involved in managing direct payments. Where a person decides not to receive direct payments the Council will provide or arrange services.

13.2. When a person consents to receive direct payments they are accountable to the Council for the way in which the money is spent. They will also take on responsibility for obtaining support through their own arrangements, which may involve taking on legal responsibilities (e.g. as an employer or by contracting with an agency).

13.3. If a mental capacity assessment is required it must follow the MCA guidelines and break the decision down into the various decisions such as the following:-

- Understand how they wish their care needs to be met
- Understand their responsibility to spend the budget on meeting these needs and not on other things
- Able to contribute to the planning process
- Able to keep themselves safe, for example by not passing on the PIN number for the prepayment card or their bank account.
- Able to understand their responsibilities as an employer (if that is relevant) with regard to setting tasks, keeping professional boundaries, not being intimidated by the employee or being at risk of being the subject of a complaint such as unfair dismissal or sexual harassment. Understanding that they may negotiate rates with providers.

14. Adults without capacity

14.1. Where a person lacks the mental capacity to consent to receive direct payments, a best interest decision under the Mental Capacity Act should be done to decide if a Direct Payment best meets their eligible needs. The worker can then identify a willing and appropriate an eligible person' who will receive and manage the payment on their behalf. Direct payments should always be

considered where a person lacks capacity through the appointment of an 'eligible person'.

14.2. Direct payments can also be requested by an 'authorised person' under the Mental Capacity Act to make personal welfare decisions for the adult (i.e. the holder of a lasting power of attorney given to them by the adult before they lost capacity or a Court appointed deputy).

14.3. It is only possible for a person lacking capacity to receive direct payments if there is an appropriate and willing 'authorised person' to receive direct payments on their behalf.

15. Carers with Parental Responsibility as Recipients of Direct Payments.

Direct Payments can only be arranged when the Council is satisfied that the parent is a person who will make arrangements that are designed to safeguard and promote the welfare of the child. Judgements as to whether parents are able to manage Direct Payments should be arrived at on a case-by-case basis.

16. Transitions

16.1. Young people under the age of 16 will have their Direct Payments managed for them. As they progress towards the age of 16 consideration will be given to allow them to take responsibility for increasing parts of their direct payment, so that by the age of 18 they will have the ability to manage their own direct payment.

16.2. Young People aged 18 or over, whose Direct Payment was previously managed by their parents and who do not have the personal ability to manage a Direct Payment, are still entitled to Direct Payments. Appropriate arrangements must be made in good time to allow the Direct Payment to continue. This may require the appointment of a nominated or eligible person.

17. Nominated Person

17.1. A person with capacity can nominate someone who will manage their Direct Payment and associated responsibilities on their behalf. This person is called a 'Nominated person' and will be required to sign a FIN107 agreeing to all terms and conditions related to direct payments. If a Direct Payment recipient has concerns or wishes to change this arrangement they should notify the Council immediately and an urgent review will take place.

18. Appointing a 'suitable person' using the Mental Capacity Act

18.1. The Council will make the decision on who is to be the 'eligible person' by using the best interest decision process using its Mental Capacity Act procedures. So far as is reasonably practicable and appropriate, the Council will consult and take into account the views of:

- anyone named by the person as someone to be consulted about whether direct payments should be made to the eligible person,

- anyone engaged in caring for the person or interested in their welfare,
 - anyone authorised to make decisions about the adult's needs for care and support.
- 18.2. So far as is reasonably ascertainable, the Council will consider:
- the adult's past and present wishes and feelings, particularly any relevant written statement made by the person before they lost capacity,
 - the beliefs and values that would be likely to influence the person's decision if the adult had capacity, and
 - other relevant factors the person would be likely to consider if they were able to do so.
 - if it is satisfied that the person will act in the best interests of the person named in the support plan and is capable of managing the direct payment themselves or with whatever help the Council thinks they will be able to access
 - if the Council is satisfied that making a direct payment to a 'eligible person' is an appropriate way to meet the needs detailed in the support plan
- 18.3. If the Council appoint a eligible person they will carry out a DBS check on
- anyone who is not the person's spouse / partner
 - someone that has not previously been involved with supporting or managing the persons care
 - someone who is not a close family member who lives in the same household as the person
 - The person with overall responsibility for the day to day management of direct payments where the eligible person is a named person in a body corporate or an unincorporated body
- The eligible person must be named as the financial agent on the service user's electronic record to enable payments to be made and they should notify the Council if they reasonably believe that the person has regained capacity.
- 18.4. In both these situations only an individual can be nominated, a Direct Payment cannot be taken on by a company or organisation. That person will have to sign and understand their responsibilities to the council by signing the FIN107.
- 18.5. One of these responsibilities is to inform the Council of any changes to the person's circumstances including the need to cease the direct payment in the event of the person's death.
- 18.6. If the nominated or authorised person managing the direct payment requires a hospital stay or is unable to carry out their duties, the council should be notified and they will carry out an urgent review to ensure the person continues to receive care and support to meet their needs. This may be through a temporary nominated person/ authorised person or through short term authority to arrange care and support.

19. Conditions for receiving direct payments

- 19.1. Direct payments will be provided when requested by a **person with capacity** when each of the four conditions is fully met:
- The person has capacity for all the responsibilities of managing a direct payment and any nominated person agrees to receive and manage direct payments.
 - The regulations do not prohibit needs from being met through direct payments.
 - The person or the nominated person is capable of managing direct payments either independently or with support.
 - Making direct payments is an appropriate way of meeting needs.

20. Declining Direct Payments

- 20.1. Requests for direct payments will be declined if any condition in this policy is not met.
- 20.2. The Council will provide a written explanation of why the request was declined including:
- which conditions are not met,
 - why the condition is considered to be unmet
 - what the person making the request may need to do to obtain a positive decision.
- 20.3. If a complaint is raised at this stage, the Council will continue the planning process to agree with the person whose needs must be met how this can be achieved without the use of direct payments.

21. Using Direct Payments

- 21.1. The Council will support and encourage people to plan creative and innovative ways to meet their needs within their budget and will consider all requests as part of the planning process.
- 21.2. Direct payments are to be used to provide personalised care and support and spent on items or services that are "safe, legal, meets eligible social care needs as detailed in the plan, is proportionate and within the agreed budget".
- 21.3. Direct payments can be used to purchase services and supports including equipment that will meet the persons assessed eligible social care needs in the most appropriate way and should be detailed in the plan.
- 21.4. The whole budget can be taken as a direct payment but if more convenient can be split between a combination of council or third party provision.
- 21.5. The use of direct payments should:
- meet assessed eligible needs and achieve agreed outcomes
 - keep the person healthy, safe and support their wellbeing
 - be affordable and proportionate to the assessed eligible social care needs
 - be detailed and agreed in the plan
 - meet their responsibilities as an employer

22. What can direct payments NOT be used for?

- 22.1. Direct payments cannot be spent on items or services that do not meet the eligible social care need of the person named in the plan and are not detailed in a valid plan.
- 22.2. The Direct payments statutory guidance states that direct payments cannot be used to purchase the following:
- Permanent Residential Care
 - Permanent Foster Care
 - Services that the NHS is required to provide
 - Equipment that would be provided by the NHS
 - Any frequently Council provided services or support such as Day Care
 - As a substitute for Disabled Facilities Grants
- 22.3. A person can choose to receive their personal budget as a mix of services arranged or provided by the Council and a direct payments to purchase other support that will meet their assessed eligible needs.
- 22.4. Direct payments are for the purchase of social care services and support and cannot be used to purchase or pay for the following;
- Drugs, alcohol and tobacco products
 - Gambling
 - General household expenses
 - Rent and housing costs including housing repairs or maintenance
 - Furniture or carpets that are not meeting an eligible assessed need
 - Food and groceries that are not meeting an eligible assessed need
 - Holidays for the person named in the plan – see respite
 - They are not to be spent to benefit or meet the need of any other person that is not the person named in the plan.
 - The recipient of the direct payment whether that is the person or their representative cannot employ themselves to provide services.
 - Cars and car repairs
 - Non statutory liabilities such as tips or bonuses or ex gratia payments
 - Health related services such as dentist, chiropody or physiotherapy
 - Treatments that are available from GP's or other sources such as alternative therapies or exercise on prescription

23. Carer Direct Payments

- 23.1. Carer direct payments are to meet the carers own eligible assessed needs and cannot be used to purchase services for the cared for person. The above list of exceptions does not apply.

24. Short respite breaks (Adults)

- 24.1. Direct payments can be used to purchase short stays / respite breaks in residential care, provided the stay in residential care does not exceed a period of four consecutive weeks in any 12-month period.
- 24.2. The regulations also state that where the interim period between two stays in residential care is less than four weeks, then the two stays should be added together to make a cumulative total, which should also not exceed four weeks. However, if two stays in residential care are more than four weeks apart then they are not added together.

25. Short respite breaks (Children and Young People)

- 25.1. Direct payments can be used to purchase a short term break in either a private or voluntary sector placement. This can either be in an establishment or a family placement arranged by either a voluntary or private sector fostering agency. The establishment or fostering agency must be registered with CSCI
- 25.2. A short term break is defined as lasting not more than 17 days, with a total of not more than 75 days a year.
- 25.3. Direct Payments may not be used to purchase a local authority placement, or to fund long term accommodation in any type of establishment or family placement. There may be some exceptions to this on a one off basis, such as using for a break at an activity that is run by the Council.
- 25.4. The placement must promote the young person's welfare. If there are doubts that the placement is not suitable (e.g.; does not have appropriate equipment or an inappropriate mix of people in residence) the recipient should seek another placement or appropriate changes. If this is not done then the Direct Payment could be withdrawn on the grounds that the placement will not promote and safeguard the welfare of the child or young person.

26. NHS Continuing Health Care & Personal Health Budgets

- 26.1. Under current legislation NHS Continuing Health Care funds cannot be given as a direct payment to a person to purchase health related services. Should a person in receipt of direct payments meet the criteria and become eligible to be fully funded by NHS Continuing Health Care then it would be unlawful for the direct payments to continue. Direct payments can continue in jointly funded cases for the social care element but not the health related element. When a person is receiving direct payments to meet both social care and health needs, steps will be taken to harmonise the process to minimise administrative and compliance requirements.

27. Purchasing from a provider or organisation

- 27.1. Where direct payments are used to purchase services from a private provider or organisation the person will be entering into a private contractual arrangement and it is their responsibility to ensure they are fully aware of any contractual obligations. Where direct payments are being used to purchase personal care, the agency must be registered with the Care Quality Commission. The provider or organisation will not receive payment direct from the Council and must not have direct access to the person's pre-payment card or bank account. If the person is unable to manage paying the providers invoices then they may consider using a managed bank account service or asking a nominated person to do it on their behalf.

28. Purchasing services from a self-employed worker

- 28.1. Direct payments should not be used to purchase services from self-employed personal assistants for personal care as advice from HMRC is that the terms of engagement and the nature of the work undertaken by the worker would not meet the criteria for self-employed status. Where an individual is

considering engaging a self-employed worker, they must adhere to HMRC rules and regulations. Where an individual fails to follow adhere to HMRC rules and regulations and HMRC impose fines or seeking repayment of any outstanding monies, the individual will be liable for these payments and not the council. It may be possible to engage a self-employed person e.g. a cleaner, but it must be emphasised that any employment, insurance or tax issues are entirely the responsibility of the individual and not the council.

- 28.2. Where an individual requires advice and information regarding HMRC rules and regulations, the Council will signpost to relevant support services.

29. Paying someone to manage your Direct Payment

- 29.1. In some instances if the nature of the package of care is complicated and subject to frequent changes then the individual may use some of their direct payment budget to pay somebody to care manage this for them. This would need to be detailed in the plan and the Council must be satisfied that this is necessary and sufficient budget to meet the essential care needs.

30. Becoming an employer

- 30.1. Where direct payments are used to employ a personal assistant, this will involve legal responsibilities as the recipient will become an employer. It is the employer's responsibility to ensure they comply with all relevant legislation, purchase employer's liability insurance and provide or arrange any staff training required.
- 30.2. A person cannot be in receipt of a Direct Payment and pay themselves as an employee.
- 30.3. It is the employer's responsibility to ensure that they are registered with HM Revenue & Customs, make payments and submit end of year returns on time to avoid fines or penalties for which they will be liable.
- 30.4. The direct payments recipient must ensure that they retain sufficient monies from the direct payments to cover all costs associated with being an employer, including redundancy, notice payments, statutory sick pay and pensions. The employer is responsible for meeting all employee related costs, insurances and regulations. The Council has an advice service to support people with these responsibilities.

31. Employing relatives or others living in the same household to provide care

- 31.1. The regulations state that unless a Council is satisfied that it is necessary to meet the person's needs they may not allow the use of direct payments to secure services from:
- A spouse (husband or wife)
 - A civil partner
 - The other member of the unmarried or same-sex couple of which they are part
 - A close relative with whom they live, or the spouse or partner of that close relative
- 31.2. In very exceptional circumstances, where the Council is satisfied that it is necessary to meet the persons needs the Council has the discretion to agree the use of direct payments to employ someone from the above list. This would have to be approved by the Council as part of a risk assessment on the sustainability of the arrangement and the impact on the wellbeing of all parties.

- 31.3. This restriction is intended to protect the family life and personal relationships of those living together, to support informal carers to have a break and to support their wellbeing including the opportunity to continue their participation in work, education, training or recreation, social and economic wellbeing and contribution to society. The Council would offer a carers assessment at this time if not already offered previously.
- 31.4. People may use their direct payments to employ a live-in personal assistant, provided that the person is not someone who would usually be excluded by the Regulations. The restriction applies where the relationship between the two people is primarily personal rather than contractual, for example if the people concerned would be living together in any event.
- 31.5. Direct Payments must not be used to pay for a direct payments recipient to live in another person's household or pay them to provide support or care. In such a situation this may be more appropriate to be a 'Shared Lives' arrangement.

32. Employing friends or relatives not living in the same household

- 32.1. People can choose to use their Direct Payment to employ friends or family not living at the same address. The plan will define the boundaries between personal and professional relationships including the sustainability of that arrangement as well as employment legislation such as the working time directive and any informal carer support they may also contribute.
- 32.2. The Council would offer a carers assessment at this time if not already offered previously.
- 32.3. In the case of a child or young person a direct payment cannot be used to pay someone who has parental responsibility.

33. Direct Payments for Adaptations

People may be eligible for financial assistance with certain adaptations. Reference should be made to the relevant policy concerning Community Equipment and Adaptations. Where financial assistance is made under this policy it can be in the form of a Direct Payment. Direct Payments cannot be used as an alternative to a Disabled Facilities Grant.

34. Direct Payments for Equipment

People may require "aids to daily living" and can ask for a Direct Payment, rather than have the equipment provided by the council or council nominated supplier. An aid to daily living can be defined as equipment recommended by an Occupational Therapist following assessment. Such equipment covers a very broad spectrum from specialised crockery and cutlery at one end, to specialised baths and hoists.

Mobility aids, as recommended by a Physiotherapist, such as wheelchairs, walking frames and so on, are the responsibility of the Health Service and cannot be purchased by a Direct Payment.

35. Hospital stays

- 35.1. Where the Direct Payment recipient requires a hospital stay, intermediate care or rehabilitation the direct payment may continue if required and their personal assistant can provide non-health care support for their employer in the health care setting. The personal assistant should not interfere

with medical duties of hospital personal but be tailored to work alongside health provision. There must be agreement with the health provider for the personal assistant to provide this support on their premises.

36. Safeguarding Alerts

- 36.1. A safeguarding alert involving a personal assistant employed through direct payments which involves any type of abuse will need to be investigated under the Council's safeguarding policy and procedures, as will any other individual that is the subject of an alert. As part of the safeguarding alert process an assessment will be made on the suitability of continuing to provide a direct payment and this will be communicated to the person or their representative.

37. Disclosure and Barring Service checks

- 37.1. The Council will inform the direct payments recipient that, while a DBS check is not mandatory for someone employed to support an adult, we would strongly recommend obtaining one as part of their overall risk management plan. It is mandatory if there is a child under the age of 18 or a vulnerable adult in the household that an enhanced DBS check is completed.
- 37.2. Adults with capacity to consent to direct payments are not obliged to obtain DBS checks for someone they employ with direct payments. Similarly, a 'Eligible Person' is not required to obtain DBS checks for people they employ with direct payments but are strongly recommended to do so.
- 37.3. Where a direct payment is used to employ someone to support a child or young person, it is mandatory that an enhanced DBS check is completed.
- 37.4. A DBS must be completed before someone employed to support a child or young person takes up post and no offer of employment should be made until a satisfactory Disclosure has been received.
- 37.5. In accordance with the regulations the Council will obtain a DBS check where the appointed 'Eligible Person' is not the spouse, civil partner, partner, close relative (or spouse or partner of a close relative) or friend involved in the provision of care of the person lacking capacity.
- 37.6. The Council will pay for DBS checks for successful applicants and as part of the start-up costs in the first year of the Direct Payment.

38. Direct Payments Agreement (FIN107)

- 38.1. The Direct Payments Agreement sets out the responsibilities between the person and / or representative or appointed 'Eligible Person' and the Council. The Direct Payments Agreement must be read, understood and signed by the appropriate person(s) before any payments can be made.

39. Payment & Frequency

- 39.1. Payments will be paid net of any assessed financial charge (if applicable) under the Council's Charging Policy and will be made every 4 weeks, unless there has been a previous over payment. The person is expected to add their assessed charge contribution to the net amount.

40. Pre Payments, bank accounts & managed bank accounts

- 40.1. The Council's standard method for making payments is by a direct payments prepaid card but if people request and there is a specific reason as

to why it would meet their needs better, they can have it paid into a bank account that is separate and designated for the persons care costs only.

40.2. A managed bank account provider can be used if required. The charge for this will be detailed on the plan and will be met by the personal budget. It will be expected that a Managed Bank Account will provide the following services, as a minimum:-

- Setting up a dedicated bank account in the person's name (they can use a prepayment card if they choose)
- Receiving the direct payments and making sure they are correct
- Paying the personal assistants wages, care agency fees and any other bills
- Paying all amounts due to HM Revenue and Customs (HMRC)
- Keeping a record of all the income received and payments made
- Providing statements showing all transactions
- Dealing with the Council's audit and inspection checks
- Making sure employer's liability insurance is in place before any employee starts

40.3. A managed bank account is a private contractual relationship between the person receiving the direct payment budget and the managed bank account provider. The Council will have no contractual authority over this service and all direct payment responsibilities such as those of an employer, keeping records, spending within the plan and other responsibilities detailed in this policy remain with the person in receipt of the direct payment.

41. Cost of Services

41.1. Direct payments can be used to fund services where the total cost does not exceed the Council's reasonable estimate of securing a service of a requisite standard and which is more cost effective and available.

41.2. Direct Payment recipients can use their own resources to purchase additional support if they wish to do so. If the person chooses to purchase additional services, or services that cost more than agreed in the plan, the person can pay additional money onto the prepaid card from their own resources.

42. Assessed Financial charge

42.1. The person must pay their assessed financial charge (if applicable) onto their prepaid card. Persistent failure to do this will result in the agreement being terminated and alternative arrangements made to meet the persons assessed needs.

43. Financial monitoring arrangements

43.1. The Council has developed proportionate financial monitoring arrangements to fulfil its responsibility to ensure that the direct payments, which are public funds, have been spent as agreed in the plan. All records relating to direct payments should be made available to the Council on request.

43.2. If an individual does not engage with the financial monitoring arrangements and does not provide records upon request then the direct payment could be ceased and an alternative way of meeting needs offered.

43.3. The Direct Payments Prepaid Card enables the council to monitor spending remotely and in 'real time', enabling intervention where necessary to

take place much sooner. The remote monitoring arrangements are less intrusive and easier for the recipient.

44. Social Care reviews

- 44.1. The frequency of reviews will be agreed, in accordance with statutory requirements, when the plan is validated and signed off. In certain circumstances where there are identified risks which give cause for concern it may be necessary to review more frequently.
- 44.2. The Regulations provide for regular reviews as well as specifying circumstances in which the Council must review the arrangement for direct payments for someone lacking capacity. Direct Payments made to a eligible person should be reviewed within 6 months and at regular intervals thereafter, at least annually.
- 44.3. Following the review the amount of direct payments could increase or decrease if there has been a change in the person's eligible needs, a change in circumstances or as a result of changes to the Council policy. If there is a reduction in the direct payments, the Council will give four weeks written notice.

45. Suspending Direct Payments

- 45.1. When a person is admitted into hospital, short term care or they access rehabilitation / reablement services where the Direct Payments are used to purchase a service from an agency, the payments will be suspended in line with the provider's notice period.
- 45.2. Where direct payments are being used to employ a personal assistant the Council will continue to pay the direct payments for a period determined on a case by case basis but not normally exceeding 4 weeks to retain the personal assistants services, after which payments would normally be suspended.
- 45.3. Where a person moves out of the county for a period exceeding 4 weeks but their permanent residency remains in Lancashire and they intend to return (meaning that they are 'ordinarily resident' in Lancashire despite being temporarily away from home), the Council can agree for the payments to continue beyond 4 weeks but this must be agreed.

46. Terminating Direct Payments

- 46.1. A person may decide at any time that they no longer wish to continue receiving direct payments. If the person remains eligible for services the Council will make arrangements for alternative services to be provided.
- 46.2. The eligible person must inform the council if there is change in circumstances or the person who receives the care dies so that the payment can be ceased.
- 46.3. Where someone with capacity was receiving direct payments but then loses capacity to consent, the council should discontinue direct payments to that person and consider making payments to a eligible person instead. In the interim, the council should make alternative arrangements to ensure continuity of support for the person concerned.
- 46.4. Direct Payments must be discontinued where the recipient is placed by the courts under a condition or requirement relating to drug and / or alcohol dependency. Councils also have discretion to discontinue direct payments in respect of particular services if the person in question becomes obliged to receive that service as a result of certain provision of mental health legislation.

46.5. The Regulations provide that a council shall cease making direct payments if the person no longer appears to the council to be capable of managing the direct payments or of managing them with help. The Regulations also state that the council must stop making Direct Payments if it is not satisfied that the person's needs can be met by using direct payments.

46.6. The Council retains the right to terminate the direct payments with immediate effect if any of the terms of the Direct Payments Agreement are not adhered to, including when:

- The person is not spending the Direct Payments, or any part of the Direct Payments, as agreed in the plan;
- The council is not satisfied that the arrangements made by the person are adequate for securing services
- The person's assessed needs and agreed outcomes are not being met;
- The person is no longer capable of managing the Direct Payments with support
- A risk assessment finds that the person is putting themselves at risk of a complaint such as under employee legislation or the management of the Direct Payment is not legal
- A risk assessment concludes that there is an imbalance in the employer/employee relationship to the detriment of meeting the eligible care needs
- The person goes into permanent residential care
- A safeguarding investigation considers that the person is at risk of abuse or has suffered abuse.

47. Repayment of Direct Payment monies

47.1. The Council will ask the recipient to repay some or all of the Direct Payments in the following circumstances;

- The money has not been used as agreed in the plan
- There has been an overpayment
- Failure to provide the required records when requested
- There are more funds in the account than needed e.g. a surplus of greater than 10 weeks of direct payments monies.

If the recipient fails to repay the money, the Council will take legal action to recover the debt.

48. Complaints

48.1. People can raise concerns directly for local resolution. People who remain dissatisfied will be provided with information about advocacy and the Council's complaints procedure.

48.2. Any person may use the Council's complaints procedure if they are dissatisfied with a Council decision or the support they receive. People who receive, or consider that they should receive direct payments have the same rights to access the Council's complaints procedure as people whose support is provided directly or arranged by the Council.

49. Implementation

49.1. This policy will be implemented on 1 April 2016.

49.2. Policy will be communicated to staff via line managers through approved processes.

- 49.3. Policy will be published on the Council's intranet and external website and made known where relevant to commissioned providers through mutually agreed processes.

50. Audit and monitoring compliance

- 50.1. Compliance with this policy will be monitored through the following, as a minimum:
- Manager / supervisor oversight of assessment and planning processes
 - Case supervision
 - Case record audit procedures

51. Review

- 51.1. This policy will be reviewed one year from the date of implementation or sooner if required.

Appendix 1 - Definitions

Definition	Meaning
Adult with capacity	In the context of this policy, an adult who has the mental capacity to make decisions about direct payments
Adult without capacity	People are always assumed to have capacity until established otherwise. In the context of this policy, where there is any doubt about an adult's capacity to make decisions about direct payments mental capacity will be assessed in accordance with the County Council's MCA policy. An adult will only be deemed to be without capacity when it has been established through assessment that this is the case.
Assessment - financial	An assessment of an individual's financial circumstances to determine whether or not they must contribute towards the cost of services required to meet eligible needs. No financial assessment is required for s117 after care services as these must be provided free of charge.
Authorised person	<p>Someone who is authorised under the MCA to make personal welfare decisions about an adult without capacity, i.e. someone who: holds a lasting power of attorney given to them by the adult before they lost capacity, or was appointed as a deputy for the adult by the Court of Protection under section 16 of the MCA. Where the person making the request for direct payments on behalf of an adult without capacity is not authorised to make personal welfare decisions as described above, the County Council and any person who is authorised to make personal welfare decisions must agree that the person making the request is a suitable person to act as the authorised person.</p> <p>Also the person who as a result of a best interest decision has been identified as a suitable person to manage and take on the responsibilities of a Direct Payment.</p>
Assessment – of needs	An assessment of an individual's needs for social care, support or s117 after care services to enable them to live

	as independently as possible.
Carer	Someone of any age who provides unpaid support to family or friends who could not manage without this help.
Close family member	Someone who lives in the same household as the adult who is the adult's: Parent or parent-in-law Son or daughter Son-in-law/daughter-in-law Stepson or stepdaughter Brother or sister Aunt or uncle Grandparent, or The spouse/partner of any of the people listed and living in the same household as the adult.
DBS checking	Screening through Disclosure and Barring Services. This checks criminal history and identifies people barred from working with children and vulnerable adults.
Direct payments	Payment of the County Council's contribution towards a personal budget, so that the person or someone authorised to act on their behalf can arrange support services instead of having them arranged by the County Council. Direct payments may also be provided in most instances to arrange s117 after care services.
Direct payments agreement FIN107	The written agreement which sets out the terms and conditions applicable to direct payments.
Duty to make direct payments	Where the Council has a legal obligation to make direct payments to eligible people because all conditions are met.
Managed account	Direct payments are made to a service which manages the funds on their behalf. The person who receives the direct payment, remains responsible for how direct payments are used. For example, if direct payments are used to employ staff, the person is the employer, even though the commissioned service may carry out employment activities on a day to day basis. Adults who are able to provide consent may also elect to use a managed account.
MCA	Mental Capacity Act 2005
MHA	Mental Health Act 1983
Minor adaptation	An adaptation is defined as minor when the total cost including supply and fitting is less than £1000.
Nominated person	A person nominated by an adult with capacity to assist with day to day management of services and / or management of direct payment funds. An adult with capacity at all times remains responsible and accountable for how direct payments are used.

Person	Is the individual that receives the direct payment and uses it to meet their own assessed needs or those of another named on the plan. This can be an adult, someone with parental responsibility or a young person between the ages of 16 to 17.
Personal budget	The amount of money allocated to fund the care and support required. The personal budget is means tested and therefore the adult may be required to make a financial contribution towards the total amount of the personal budget.
Plan	A plan which summarises how a person's needs will be met and which includes the details of needs to be met from direct payments. This may be a care plan in the case of a child, a support plan for an adult in need of care, or a support plan in the case of a carer.
Reassessment	A reassessment of needs for social care and / or support.
Review	Monitoring and review of direct payment arrangements to ensure that they continue to meet the needs. Usually carried out concurrently with a review of the person's plan
Suitable Person	The term previously used to describe an authorised person. If the person with eligible care needs does not have the mental capacity under the MCA to decide to take a direct payment or be able to manage the responsibilities a suitable person can be identified by the Council as part of a best interest's decision to receive and take on the responsibilities for that person.
S117 after care services	Section 117 of the Mental Health Act 1983 gives a duty to the NHS and Local Authorities to provide after-care services to individuals who have been detained under certain provisions of the Mental Health Act 1983, until such time as they are satisfied that the person is no longer in need of such services. Section 117 is a freestanding duty to provide after-care services, without any financial contribution by the service user, for needs arising from their mental disorder.

Appendix 2

People excluded from direct payments

Direct payments may not be used to meet the needs of people who are:

- (a) subject to a drug rehabilitation requirement, as defined by section 209 (drug rehabilitation requirement) of the Criminal Justice Act 2003 ("the 2003 Act"), specified in a community order (as defined by section 177 (community orders) of that Act, or a suspended sentence order (as defined by section 189(c) of that Act) ;
- (b) subject to an alcohol treatment requirement, as defined by section 212 of the Criminal Justice Act 2003, specified in a community order (as defined by section 177 of that Act), or a suspended sentence order (as defined by section 189 of that Act);
- (c) released from prison on licence—
 - (i) under Chapter 6 of Part 12 (sentencing: release, licenses and recall) of the 2003 Act or Chapter 2 of Part 2 (effect of custodial sentences: life sentences) of the Crime (Sentences) Act 1997 ("the 1997 Act"), subject to a non-standard licence condition requiring the offender to undertake offending behaviour work to address drug or alcohol related behaviour; or
 - (ii) subject to a drug testing requirement under section 64 (as amended by the Offender Rehabilitation Act 2014) (release on licence etc: drug testing) or a drug appointment requirement under section 64A (release on licence etc: drug appointment) of the Criminal Justice and Courts Services Act 2000;
- (d) required to comply with a drug testing or a drug appointment requirement specified in a notice given under section 256AA (supervision after end of sentence of prisoners serving less than 2 years) of the 2003 Act;
- (e) required to submit to treatment for their drug or alcohol dependency by virtue of a community rehabilitation order within the meaning of section 41 of the Powers of Criminal Courts (Sentencing) Act 2000 or a community punishment and rehabilitation order within the meaning of section 51 of that Act;
- (f) subject to a drug treatment and testing order imposed under section 52 of the Powers of Criminal Courts (Sentencing) Act 2000;
- (g) required to submit to treatment for their drug or alcohol dependency by virtue of a requirement of a community payback or probation order within the meaning of sections 227 to 230 of the Criminal Procedure (Scotland) Act 1995 or subject to a drug treatment and testing order within the meaning of section 234B of that Act; or
- (h) released on licence under section 22 or section 26 of the Prisons (Scotland) Act 1989 (release on licence etc.) or under section 1 (release of short-term, long-term and life prisoners) or 1AA (release of certain sexual offenders) of the Prisoners and Criminal Proceedings (Scotland) Act 1993 and subject to a condition that they submit to treatment for their drug or alcohol dependency.

Source:

Care and Support (Direct Payments) Regulations 2014 – Regulation 2, Schedule 1

Report to the Cabinet Member for Highways and Transport and the Cabinet Member for Environment, Planning and Cultural Services

Report submitted by: Head of Service Policy, Information and Commissioning (Live Well)

Date 10 March and 16 March 2016

Part I

Electoral Division affected:
Penwortham North; South
Ribblesdale Rural West;

Approval to Amend the Adopted Route for the Penwortham Bypass (Appendix 'A' refers)

Contact for further information:

Phil Wilson, 01772 534559, City Deal Delivery Project Manager,

Phil.wilson@lancashire.gov.uk

Janet Wilson, 01772 538647, Commissioning Manager (Live Well),

janet.wilson@lancashire.gov.uk

Executive Summary

Approval is sought to amend the adopted and protected route for the Penwortham Bypass as shown on the plan at Appendix 'A'.

Route adoption and protection was approved in March 2015 following public consultation on a single alignment rather than design options for the route, for the reasons that, as described in this report, an indicative route showing a direct link between the A582 at Broad Oak roundabout and the A59 west of Penwortham at Howick Cross had already been identified in the published Central Lancashire Highways and Transport Masterplan. It also provided the opportunity to rescind the approval of the east west route which was then the adopted route.

The proposed scheme provided a highway solution to deliver the aims of the Central Highways and Transport Masterplan providing approval and protection to develop the scheme. Further work, particularly in relation to traffic modelling, has provided the opportunity to amend the proposal in two areas:

- Replace the proposed roundabout junction on the A59 with a signal controlled T junction resulting in improved and simpler pedestrian and cycling facilities, reduced land take and increased promotion of the bypass as a route.
- Reconfigure the A582 junction to accommodate the forecast future traffic growth in particular on the northern arm of the roundabout. This does incur a small amount of additional land take.

This is deemed to be a Key Decision and the provisions of Standing Order No. 25 have been complied with.

Recommendation

The Cabinet Member for Highways and Transport is recommended to:

- i. approve the amended route, as shown at Appendix 'A', and agree that it be adopted as the route of the Completion of the Penwortham Bypass;
- ii. agree that the Cabinet Member for Environment, Planning and Cultural Services be requested to adopt and safeguard the amended route of the Completion of the Penwortham Bypass as that shown at Appendix 'A' for development control purposes; and
- iii. agree that South Ribble Borough Council be notified that the amended route shown at Appendix 'A' should be included and protected in the Development Plan as the route of the Completion of the Penwortham Bypass

Background and Advice

The Central Lancashire Highways and Transport Masterplan (CLHTM) was published by the County Council in March 2013 and provides the basis for determining future transport investment priorities across Preston, South Ribble and Chorley. Many of the transport priorities identify large-scale improvements and additions to the existing highway network.

It has been evident over many years that the existing transport network serving Preston and the wider area is becoming increasingly congested, despite a range of improvements and sustainable travel measures that have been introduced.

Recognising this issue, the Central Lancashire local authorities agreed to fund a transport model to study traffic flows on the transport network and permit a more comprehensive and strategic analysis of how the area's transport network functions and the potential alternatives to satisfying current and future traffic demands.

This study was brought into particular focus with the preparation of the Central Lancashire Core Strategy and the scale and distribution of new housing to be accommodated as part of the area's development strategy. The strategic development areas identified in these plans, in North West Preston and along the A582/B5253 in South Ribble, confirmed that simply relying on improvements to the existing network and even with a much greater investment in sustainable travel measures, Central Lancashire's transport network would not be able to cope with the future demands. Instead, substantial additional transport infrastructure would be required to serve this new development and growth in the wider area. The County Council undertook to develop a solution to support the area's growth and deliver the Core Strategy.

As a result, Central Lancashire was the first area in the County to have a highways and transport master plan developed. Master plans were identified in the Local Transport Plan as a means for highway and transport implications to properly inform and influence Lancashire's development and growth, and provide a sound basis to determine transport investment priorities.

The CLHTM was published in March 2013 following a public consultation exercise, and represents the County Council's considered position of the transport infrastructure needed to support the delivery of its development strategy. Its findings and proposals have been fully incorporated into the emerging Local Plans, and more particularly site allocations policies, in the area.

The Central Lancashire Traffic Model underpinning the CLHTM, also identified that the current transport network serving Preston and South Ribble simply does not have enough spare capacity to allow for significant changes to improve bus journey times and enhance the public realm to encourage walking and cycling. This led the master plan to conclude that significant additions to existing highway infrastructure, of a scale and location to support the area's strategic development sites, would be needed to support the development aspirations of Central Lancashire.

The Completion of the Penwortham Bypass between the A582 and A59 is one of four major road schemes identified in the CLHTM. Its completion will complement the capacity improvements along the A582 and Penwortham New Bridge linking to Ringway, will support economic development through travel reliability and convenience, and provide congestion relief to Penwortham along the A59 corridor.

More particularly, it will:

- Improve access from the A59 to the motorway network on a suitable road that does not pass through Penwortham or Preston city centre;
- Reduce traffic in Penwortham, which experiences very significant peak hour congestion, and allow public realm improvements and measures to promote walking and cycling in the town centre;
- Provide opportunities for bus priority on the A59, including the potential for park and Ride.

Preston, South Ribble and Lancashire City Deal

The Preston, South Ribble and Lancashire City Deal was signed in September 2013 and provides a financial structure to deliver the transport improvements identified in the CLHTM, subject to planning, land assembly and other statutory procedures, and in advance of the bulk of development so to minimise as far as possible the impacts on the existing transport network and on local communities and road users.

In April 2014 a programme for delivery, presented in the City Deal Infrastructure Delivery Plan (IDP) for 2014/15, was endorsed by the Cabinets of the 3 Local Authorities and approved by the City Deal Executive. The IDP timetable programmes the development and approval of routes for the completion of Penwortham Bypass and the route protected during the 2014/15 financial year.

Central Lancashire Traffic Model

Analysis of the highway network was undertaken using the Central Lancashire Traffic Model (CLTM). This model, commissioned by the County Council and developed by a team of specialist consultants, is a detailed traffic assignment model which covers a large area of Central Lancashire from the M55 in the north to the southern limits of Leyland.

The model analysed highway network performance and predicted future traffic patterns based on the planned local growth and the known infrastructure improvements being delivered by the Preston South Ribble and Lancashire City Deal over the forthcoming years.

Reasons to Change the Adopted Route

The original request for approval to adopt and protect the route in March 2015 was to seek approval to introduce the significant change of route from the east west 'blue' route approved in 1994. This would release the restrictions imposed by the adopted blue route and allow the Central Lancashire Highways and Transport Masterplan route to be protected and thereby allow its development in accordance with the Masterplan and the supporting Preston South Ribble and Lancashire City Deal.

The CLHTM route was supported by the CLTM and was sufficiently developed to determine that it was a suitable route and required a dual carriageway in capacity terms.

Subsequent to this the traffic model has developed and has allowed a more detailed analysis particularly with respect to detail design of the junctions at each end of the bypass.

The junction with the A59 at Howick was originally proposed to be a roundabout. Detailed analysis has permitted this to change to a traffic signal controlled T junction. There are advantages to this layout in that there is reduced land take, removing any requirement north of the A59 and reducing the area of school playing field on the southern side. Additionally the movements and number of road crossings required by pedestrians and cyclists to navigate the junction is reduced. It also promotes the bypass as the main traffic through route with traffic signal control additionally providing the opportunity to prioritise the bypass movement. The latter two changes assist in addressing concerns raised at the public consultation held prior the submission of the original report in March 2015.

The junction proposal at the southern end of the bypass was to connect to the existing roundabout on the A582. This principle has not changed, however the developed detailed traffic modelling has indicated that the Preston bound arm will be required to be 4 lanes exiting the roundabout as opposed to the originally proposed 2 lanes. This will facilitate the most efficient movement of traffic through the junction. The implication of this is that a section of garden of a residential property will be required potentially giving direct rise to a blight claim.

Consultations

N/A

Implications:

This item has the following implications, as indicated:

Risk management

If the recommendation is not approved, there is the risk that delivery of the currently adopted route will compromise the operational performance of the scheme reducing the positive effects of the route as a bypass of the Higher Penwortham area.

Financial, Legal, Property

There are financial implications in relation to the protection of the route for the Completion of Penwortham Bypass. A small number of properties are directly affected by the route. Under the Town and Country Planning Act 1990, the authority may receive claims relating to blight. Costs associated with this scheme will be funded through the Preston, South Ribble and Lancashire City Deal Infrastructure Delivery Fund.


List of Background Papers

Paper	Date	Contact/Tel
Adoption of the Route for the Penwortham Bypass	2014	Phil Wilson/01772 534559
Penwortham Bypass consultation report	2014	Phil Wilson/01772 534559

Reason for inclusion in Part II, if appropriate

N/A



		NO.		DATE		AMENDMENT DETAILS							
		REVISIONS											
<div><div>Lancashire County Council</div><div></div></div>				<div>Planning & Environment</div>									
<div>City Deal Delivery Team</div>													
PROJECT TITLE				CLM03									
DRAWING TITLE				PEMWITHAM BYPASS									
				CLM03									
				Revised									
				Approved Plan									
DRAWN BY		JF		PROJECT No.		CLM03							
CHECKED BY		RA		DRAWING No.		CLM03-DEV-010-015							
DATE		February 2016		SHEET No.		1 of 1							
SCALE @ A1		1:2500 @ A1		REVISION:									
CLIENT No.		CLM03											

Report to the Cabinet Member for Environment, Planning and Cultural Services
Report submitted by: Head of Libraries, Museums, Culture and Registrars
Date: 16 March 2016

Part I

Electoral Division affected: All
--

The Future of Blaze - Young People and Culture Project
(Appendix 'A' refers)

Contact for further information:
Russell Tennant, 01772 536732, Arts Development Manager
Russell.tennant@lancashire.gov.uk

Executive Summary

This report is requesting agreement for a sum of £10,000 to be allocated from the Libraries, Museums, Culture and Registrars (LMCR) budget 2015/16 towards the Blaze young people's arts and culture project.

The report follows on from the decision that was taken by the Cabinet Member for Environment, Planning and Cultural Services on 4 November 2015.

This is deemed to be a Key Decision and the provisions of Standing Order No.25 have been complied with.

Recommendation

The Cabinet Member for Environment, Planning and Cultural Services is asked to agree:

- (i) that a sum of £10,000 from the LMCR budget for 2015/16 is allocated to Curious Minds as a one off payment to help secure the future sustainability of the Blaze project.
- (ii) that the payment at (i) above is conditional upon match funding from Curious Minds.

This decision should be implemented immediately for the purposes of Standing Order 34(3) as any delay could adversely affect the execution of the County Council's responsibilities. The Council's payment would enable match funding to be released by Curious Minds to help the Blaze project's transition to a sustainable future without Lancashire County Council funding.

Background and Advice

Blaze began as a project funded by the Legacy Trust as part of the North West's Cultural Programme for London 2012. The Legacy Trust was a charity established in 2007 London, with the aim of creating a lasting cultural and sporting legacy from the London Olympic Games.

The project was developed and delivered by Lancashire Arts Development Team in partnership with Blackpool Council and it was conceived as a youth led artistic programme that combined art, digital practice and physical activity to engage the public in the run up to the London Olympic Games in 2012. Young people had the opportunity to develop their artistic and organisational skills by working with a range of international artists to create original events that culminated in a spectacular Blaze Festival as part of Preston Guild 2012.

Since 2012, Blaze has been purely Lancashire focussed and Blackpool Council is no longer involved in delivering the project. Blaze has won support from Arts Council England and delivers arts events, activities and workshops, instigated by young people and working with professional artists in Lancashire County Council libraries. The young people benefit from a range of creative experiences and gain significant organisational skills which have helped participants secure employment in arts and cultural organisations across the North West.

Blaze's aim is:

"To develop future creative communities in Lancashire, by engaging young people with the arts, libraries and museums."

Current Position

Over the last 12 months Blaze has secured over £70,000 of external funding for delivery

Blaze has a strong brand identity and because of external funding has had some flexibility in the way it promotes and develops projects to engage young people.

Most of the freelance team have come to the end of their contracts with the Project Manager due to finish imminently.

Blaze Achievements

Since April 2015, Blaze has recorded 1231 attendances by 13 -21 year olds at creative sessions in Lancashire libraries. This is an age group that libraries traditionally have found the most challenging to engage with. Blaze has made progress in the training and work experience that it has given to young people and many have taken the journey from being participants to volunteers, to becoming part time staff for Blaze and then on to other employment in the creative industries.

Participation figures	1231
Blaze Festival audience	4967
Other live audience	9011
Online, broadcast, print audience	27,000
Total audience	40,708

Blaze has helped several young people reach their goal of gaining entry to university by providing out of school opportunities that they can cite in their applications.

Blaze currently delivers activity in five of the recently identified Service Planning Areas – Burnley Central (2), Preston Central (5), Hyndburn East (6), Skelmersdale (7) and Fleetwood (8). In addition Blaze produces a quarterly magazine written and edited by young people - Culture on A Shoestring, which is distributed across Lancashire and beyond.

“I’ve never been good in social situations but I’ve learned and gained a lot of experience and want to volunteer more on projects and around Burnley.” T, Burnley.

“Meeting new people has given me a different perspective and respect for others. I have learned to be more tolerant” C, Skelmersdale.

Advice

Officers have been working in consultation with the arts sector to develop new ways of supporting and developing the arts infrastructure in Lancashire in the context of local authority funding challenges. A recurrent theme of this work is that strengthening partnerships and co-operation across the sector will help build resilience in the sector and it is in this context that the future of Blaze should be viewed.

Officers are in the process of submitting an arts investment paper to Cabinet Working Group for the Third Sector which details a further commitment from Curious Minds to financially contribute to the development of an arts and culture offer for children and young people in Lancashire.

Curious Minds

Initial conversations have taken place with Lancashire based organisation Curious Minds who are a registered charity with a mission to connect children and young people with the best quality arts provision by broking relationships with schools, youth groups and arts organisations. Curious Minds are a charity funded by Arts Council England to be the bridge organisation for the North West. Curious Minds hold funding that could be released if there was a Lancashire County Council match. As Curious Minds is not a direct delivery organisation they feel Blaze would complement their existing work. Curious Minds have funding for projects such as Blaze that must be matched £1 for £1. So a £10,000 commitment from LCC would allow Curious Minds to allocate £10,000 to Blaze, meaning an initial budget of £20,000. This would be a one off payment to help Blaze transition to a sustainable future without Lancashire County Council funding. An agreement on the priorities for Blaze for 2016/17 would be drawn up by officers. Curious Minds feel that could give the staff resource and expertise to develop and grow Blaze. Curious Minds have

recently relocated to Preston, which puts them in a more central location in the County and they will become the only Arts Council National Portfolio organisation based in Preston. Curious Minds are confident that Blaze could become sustainable beyond 2017 as a youth arts delivery and consultation project, after the initial transition investment from Lancashire County Council. See Appendix 'A' for further details.

Consultations

Discussions have been held with the freelance staff who currently manage Blaze. Discussions have also taken place with Curious Minds as detailed in this report.

Implications:

This item has the following implications, as indicated:

Risk management and Legal

There is a risk in reputational damage in withdrawing a service for young people that delivers in 5 of the top ten neighbourhoods identified as Service Planning Areas in the draft corporate strategy. The success and sustainability of the project is more likely with a provisional commitment of £10,000 as this would help unlock external funds.

There is also a risk is that the Council's payment of £10,000 is not match funded by Curious Minds. Terms and conditions will be imposed to ensure that the council's payment is returned should match funding not happen.

List of Background Papers

Paper	Date	Contact/Tel
N/A		
Reason for inclusion in Part II, if appropriate		
N/A		

Curious Minds support for Blaze

Curious Minds have identified the resources in terms of finance and staff support that they can offer Blaze Young People's project and these are outlined below:

- the Blaze team with desk space at our base within the Guild Hall
- line-management and mentoring to Project Manager and the other co-ordinators
- investment up to the value of £100k – this would be backed by a robust business plan designed to see Blaze become sustainable in its own right within 2 years (or sooner)
- back-office support, including financial management and monitoring using our in-house Sage and CRM systems (managing and facilitating cash-flow when necessary)
- governance support and development
- fundraising support, including bid-writing and donor fundraising
- access and use of our contacts and influence across the cultural and education sectors
- potential to offer a range of commissions directly
- continuity of staffing using our investment as the existing grant comes to end

Curious Minds statement

"We see a clear benefit to Curious Minds in delivering this partnership arrangement. As you are aware, as the North West Bridge organisation, we are tasked with facilitating a cultural offer for young people across the region. Our move to Preston is designed to enable us to position ourselves in Lancashire as a community asset and we are particularly keen to develop the cultural offer in and around Preston City Centre. As a Lancashire based organisation we want to ensure that the county is not seen as poor relation to the rest of the region when it comes to delivering great culture for children and young people. We also have a responsibility to support libraries to develop their offer for young people and can see that Blaze provided a sound platform to make this happen.

We are aware that LCC is under pressure to deliver considerable cuts and as Preston's only NPO, we think that we can offer Blaze the stability it needs to grow and develop so that it continues to be a resource for Lancashire's arts and cultural sector.

There are many reasons why we believe we are in a good position to support Blaze. Because we do not do any direct delivery to CYP ourselves we are uniquely able to provide support and mentoring to the Blaze team without being in direct competition with their core-business. We have many connections with the cultural and education sectors and will use these to develop trading opportunities so that Blaze does not have to rely on grant funding as it does now. We also think that our backing will secure the confidence of ACE, along with other funders and commissioners, to continue to invest in the work.

In delivering the support to Blaze we would want to continue to work in partnership with LCC to ensure the strategic direction is aligned with any future cultural strategy for the County.

The investment we are able to offer requires us to demonstrate an equivalent level of match funding. While we are happy that some of this match could be levered retrospectively via the business plan (that we'll help them to write) and future funding bids, it would be ideal to have a commitment from LCC that it will continue to invest; allowing Blaze to remain a key part of LCCs cultural portfolio.

As discussed, the ultimate ambition here would be that Blaze becomes an independent and sustainable organisation in its own right."

Report to the Cabinet Member for Children, Young People and Schools
Report submitted by: Head of Service Asset Management
Date: 9 March 2016

Part I

Electoral Division affected:
Chorley East; Chorley
North; Chorley Rural East;
Chorley Rural North;
Chorley Rural West; Chorley
South; Chorley West

The Provision of Additional Secondary School Places in Chorley

Contact for further information:
Lynn MacDonald, 01772 532402, School Planning Manager,
Lynn.macdonald@lancashire.gov.uk

Executive Summary

This report provides information on projected future pupil numbers in Chorley District secondary schools and the actions taken to secure additional places in order to meet future demand. The report seeks approval to expand one school with effect from 2017, and to enter into further negotiations with the remaining secondary schools to provide future additional places.

This is deemed to be a Key Decision and Standing Order 25 has been complied with.

Recommendation

The Cabinet Member for Children, Young People and Schools is recommended to:

- (i) note the complexities of commissioning additional places in the secondary sector as set out in the report;
- (ii) approve the expansion of Holy Cross Catholic High School by 30 places per year group on a permanent basis with effect from September 2017, taking the published admission number from 165 to 195;
- (iii) note that officers will start to conduct further negotiations with secondary schools in the Chorley District to secure more additional places to deal with longer term demand; and

(iv) note the initial estimate of cost for delivering the one form of entry expansion project at Holy Cross Catholic High School.

Background and Advice

Since 2010, the local authority has commissioned around 3,000 additional school places, mainly in the primary sector, to deal with rising birth rates. This increase in births, coupled with large scale housing in some parts of the county, is now beginning to impact on the secondary sector across some districts to varying extents and according to varying timescales. Chorley District is the first district where the demand for places has begun to outstrip supply (as demonstrated by the provision of and subsequent filling of an additional form of entry in September 2015). A further increase in pupil numbers means that further remedial action is required to secure sufficient school places in the future.

The local authority has a significantly reduced scope to effectively commission additional secondary school places compared to its commissioning ability in the primary sector. The reasons for this are as follows:

- there are relatively few schools in scope within areas of demand compared to those in the primary sector;
 - of the reduced number of schools, a significant proportion will be voluntary aided; foundation; or academy, which are not subject to the local authority's commissioning powers;
 - the practical obstacles to expanding secondary schools are significant due to the suiting of subject areas; core facilities that are not capable of dealing with a much increased pupil roll; and the costs of remodelling (which may be prohibitive) to address these issues.
- In addition;
- a number of secondary schools are on small sites that will not receive approval under section 77 of the School Standards and Framework Act 1998 to expand; and
 - the ability to commission new schools is restricted due to the size secondary schools need to be in order to operate successfully and offer a broad and balanced curriculum.

With regard to the last point, the local authority could, for instance, commission a one form entry primary school if this was considered to be the best solution locally to providing additional places. However, secondary schools generally need to be much larger to ensure their future viability and competitiveness. The local authority has not established a policy around the minimum size of secondary schools for commissioning purposes but it is suggested that new schools would ideally be 6 forms of entry or above (admission number 180), in order to have the flexibility to manage annual peaks and troughs in pupil numbers in the longer term. The need for additional secondary school places on this scale is only likely where there is housing development of sufficient scale to justify a new school. In all other instances, the local authority will be reliant on existing schools to provide the additional places.

Chorley District

The projections for the Chorley District secondary schools indicate that an additional form of entry will be required in Year 7 in September 2017. This is followed by years when the increased level of provision is sufficient.

Total Published Admissions Number (PAN)at January 2016: 1145

	Intake 2017	Intake 2018	Intake 2019	Intake 2020	Intake 2021	Intake 2022	Intake 2023	Intake 2024	Intake 2025
Without housing yield/ migration applied	1183	1182	1175	1242	1220	1300	1277	1289	1255
Potential shortfall	38	37	30	97	75	155	132	144	110
With Housing/ migration applied	1198	1197	1190	1257	1235	1315	1292	1304	1270
Potential shortfall	53	52	45	112	90	170	147	159	125

Whilst pupil projections beyond 2020 rely on a number of assumptions to be made in connection with the likely level of housing and migration which may come forward (projections use the district's 5 year housing land supply to estimate likely housing yield), projections based upon actual numbers in the primary sector show a shortfall of between 30 and 112 places by 2020. This equates to between 1 and 4 additional forms of entry (FE).

In the longer term, the need for between 75 and 155 places per year is sustained for future years (based upon numbers in the primary school sector), with the potential for additional housing (at current rates) and migration to increase this shortfall to between 90 and 170 places per intake year (between 3 and 5.5 FE).

Proposed Solution

In order to deal with the need for places in the medium term, officers asked for an additional form of entry to be provided across the Chorley District secondary schools for September 2017, made up from one or more of the existing schools expanding. Three schools came forward with expressions of interest. (However, on further investigation, one of the schools was not able to offer the full 30 places per year required.)

Officers spent time with all three schools to understand their curriculum model and how additional pupils would impact on accommodation needs. At the end of the process, the relative feasibility of expansion at each of the schools was considered and, based upon this data and comparison with the criteria for expansion published

within the 'Strategy for the Provision of School Places and Schools Capital Investment 2015/16 to 2017/18', a decision was made by the School Development Group that the most appropriate option for expansion for 2017 would be at Holy Cross Catholic High School.

Holy Cross Catholic High School governing body met on 28 September 2015 and agreed to a permanent increase in the school's admission number from 165 to 195 with effect from September 2017. Additional accommodation will be provided at the school to enable it to accommodate the additional pupils. Confirmation of the approval of the governors was received on 29 September 2015.

Holy Cross has a current Ofsted rating of 'Good' and the site and premises are capable of accommodating an expansion. The Liverpool Catholic Diocese has also provided evidence that there is an increased demand from children in the Catholic primary sector which helps to justify the expansion at this school.

Proposed Solution

It is proposed that the local authority proceeds with the one form entry expansion of Holy Cross Catholic High School, thus providing the additional places required for 2017. It is anticipated that this will provide sufficient places to accommodate demand until 2020.

With regard to the need for further additional places in Chorley for 2020 and beyond, the following mitigating factors need to be considered:

- just 91% of children in Chorley primary schools go on to attend secondary schools in Chorley. This rate has remained generally consistent for over 5 years;
- whilst the migration rate has been factored into the projections, it is clear that there is an established pattern of Chorley children attending secondary schools outside of the district, in particular the South Ribble schools;
- it is predicted that the South Ribble secondary schools, particularly those located along the Chorley border, will continue to have available places in Year 7 for the foreseeable future; and
- pupils will appeal for places at the most popular Chorley secondary schools and it is highly likely that some schools will need to take pupils in excess of their admission numbers through this process, particularly where some schools may have an admission number lower than the Indicated Admission Number suggested by their Net Capacity.

Therefore, it is proposed that the local authority now starts to scope available solutions for the provision of the additional places required for 2020 and beyond, starting with a meeting with the Head teachers and Chairs of Governors of the Chorley District secondary schools to open up a debate as to how the longer term need for places will be met.

There are six secondary schools in Chorley: one community school; one voluntary aided catholic school and four academies. Therefore, a negotiated and agreed

solution to providing the additional places is needed, due to the local authority's restricted commissioning powers in the District.

Consultation

Expressions of interest were requested from all Chorley District secondary schools and meetings were held with the three schools that came forward through this process.

Statutory consultation is not required in order to expand Holy Cross Catholic High School by 30 places per year. Statutory consultation is only required where a school is to expand by more than 30 pupils and 25% or 200 pupils (whichever is lesser) of its original size. The proposed expansion of Holy Cross represents a 12.72% expansion. Typically in these situations, the school in question may run an informal consultation with parents and interested parties but this is a matter for the school to consider.

Implications:

This item has the following implications, as indicated:

Risk management and Legal

The local authority has a statutory responsibility to ensure the provision of sufficient high quality school places. Projections indicate that there will be a need for additional secondary school places in the Chorley District in the foreseeable future and the proposed expansion of Holy Cross Catholic High School is a step in providing for this need.

Financial

The Capital Strategy for Schools 2015/16 - 2017/18 approved by the Cabinet Member on 5 November 2015, proposed that some of the Basic Need Allocation 15/16 – 17/18 be used to provide additional secondary school places in Chorley. The estimated cost of a one form entry expansion at Holy Cross can be met from this allocation.

Officers have had some initial meetings with the school and an outline brief has been developed to meet the 1FE accommodation requirements. The cost associated with these initial proposals is estimated to be in the region of £3.3m.

List of Background Papers

Paper	Date	Contact/Tel
Report to the Cabinet Member for Children, Young People and Schools - 'Capital Strategy for Schools 2015/16 to 2017/18'	5 November 2015	Joanne Mills, Office of the Chief Executive, 534284

Reason for inclusion in Part II, if appropriate

N/A

Agenda Item 8a

(NOT FOR PUBLICATION: By virtue of paragraph(s) 3 of Part 1 of Schedule 12A of the Local Government Act 1972. It is considered that all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the information)

Document is Restricted

Agenda Item 8b

(NOT FOR PUBLICATION: By virtue of paragraph(s) 3 of Part 1 of Schedule 12A of the Local Government Act 1972. It is considered that all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the information)

Document is Restricted

(NOT FOR PUBLICATION: By virtue of paragraph(s) 3 of Part 1 of Schedule 12A of the Local Government Act 1972. It is considered that all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the information)

Document is Restricted

Agenda Item 8c

(NOT FOR PUBLICATION: By virtue of paragraph(s) 3 of Part 1 of Schedule 12A of the Local Government Act 1972. It is considered that all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the information)

Document is Restricted

Agenda Item 8d

(NOT FOR PUBLICATION: By virtue of paragraph(s) 3 of Part 1 of Schedule 12A of the Local Government Act 1972. It is considered that all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the information)

Document is Restricted

(NOT FOR PUBLICATION: By virtue of paragraph(s) 3 of Part 1 of Schedule 12A of the Local Government Act 1972. It is considered that all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the information)

Document is Restricted

