Response:

The Care Act consultation

Chapter 4: Market shaping and commissioning
1. Introduction

The National Housing Federation is the voice of affordable housing in England. We believe that everyone should have the home they need at a price they can afford. That’s why we represent the work of housing associations and campaign for better housing.

Our members provide two and a half million homes for more than five million people. And each year they invest in a diverse range of neighbourhood projects that help create strong, vibrant communities. Approximately half our members provide care and support services ranging from residential care, to extra care schemes and specialist provision of accommodation and support to meet a range of needs for care and support within and beyond eligibility for social care.

Housing and the home has an integral role to play in the social care system and are pleased to be able to offer our response to this chapter of the Care Act guidance.

We recognise that the Department of Health is operating under a tight timescale, particularly from the end of the consultation period to the publishing of the guidance and regulations. In order to assist bill leads and give as much time as possible for the consideration of our suggestions, the National Housing Federation will be responding to individual chapters separately and directly to bill leads.

2. Overview

Effective market shaping is vital in order to ensure diversity and choice. Too often social care markets have not been sufficiently developed to offer this.

Local authorities will need to take an active role both in setting out the needs of communities, provision available, and identified gaps, as well as exercising their commissioning role in a way that enables diversity and choice of provision. We believe the guidance can and should work harder to ensure this happens in ways that are nationally consistent with the legislation and locally appropriate to markets and contexts of different local authorities.

We welcome many elements of the guidance, including the focus on outcomes and well-being, the clear delineation of commissioning and procurement, and promoting quality services. In particular we welcome that the guidance identifies clearly the process that local authorities should go through in carrying out this function, as set out by the 4 sections “Developing strategy; engaging with providers and communities; understanding the market; facilitating the development of the market.”

For successful local delivery of the Care Act it is important to ensure that local authorities understand their responsibilities and are assisted to deliver this function in a meaningful way.
Given the scale of the financial pressures on local authorities, there’s a risk to implementation that local authorities will have to focus narrowly on the biggest changes and miss out on opportunities to develop practice around market shaping, prevention and collaboration. To mitigate this, the tone and language of the guidance should rigorously focus readers on how to achieve practical and significant steps forward in market-shaping.

3. Suggested amendments

Clarity and consistency in approach to Market Position Statements (4.50, 4.57, 4.74, 4.76)

The language used in the draft guidance on Market Position Statements is rather weak, and should to be amended.

Paragraph 4.50 states that “it is suggested” that a local authority can best commence it’s duties by developing a Market Position Statement. Paragraph 4.57 uses the wording “including through developing the JSNA and a Market Position Statement or equivalent document”. Paragraph 4.74 also uses the wording “it is suggested” in relation to a Market Position Statement, whilst paragraph 4.76 states that a Market Position Statement is “one way a local authority can meet its duties”.

We believe market position statements are well established enough as a concept for the guidance to be stronger and clearer on their role. If local authorities are to set out effectively what the local needs are, what gaps in provision there are, and what they services they intend to buy in, then it is difficult to see how this can done effectively without a Market Position Statement. We believe this is a critical part of their duty.

The following changes should be made to the draft guidance

Replace current paragraph 4.50 with:

“4.50 Local authorities should develop with providers and stakeholders a published Market Position Statement to commence their duties under Sections 5 (market shaping and commissioning) and 48-57 (market oversight and provider failure) of the Care Act.”

Amend the opening sentence from paragraph 4.57 from “4.57 Local authorities should engage with a wide range of stakeholders and citizens in order to develop effective approaches to care and support, including through developing the JSNA and a Market Position Statement or equivalent document…” to read:
"4.57 Local authorities should develop a Market Position Statement and engage with a wide range of stakeholders and citizens in order to develop effective approaches to care and support, including through developing the JSNA."

Remove the following sentence in paragraph 4.74 “It is suggested that this is best achieved through a document like a Market Position Statement that clearly provides evidence and analysis and states the local authority’s intent”. Insert the following sentence at the beginning of paragraph 4.74:

"4.74 Local authorities should publish a Market Position Statement that clearly provides evidence and analysis and states the local authority’s intent."

Replace current paragraph 4.76 with:

"4.76 By developing and publishing a Market Position Statement a local authority can meet its duties to make available information about the local market, and demonstrate activity to meet the other parts of Section 5 of the Act."

**Strengthen links to the prevention duty**

In the current highly pressured financial climate, preventive services need to be a central consideration in developing the social care market or the Care Act’s implementation will fall short ambitions for a more preventative system.

In sections 4.17 and 4.44 the wording reads “should”. Given that this is a duty set out in the Care Act, we believe that in both references “should” be “must”. Other duties are referenced with a “must”, such as the duty to facilitate information and advice in paragraph 4.43 and this current wording on the prevention duty is inconsistent with other statutory duties in the Act.

4.44 should set out what the duty is that a local authority must consider, before setting out how it may do that. The opening sentences of the amended paragraph in 4.44 should read:

"4.44 Local authorities must provide preventative services. This should encompass enablement and support services, including support for carers to make caring more sustainable…"

4.17 should be amended to read:

"4.17 Local authorities must have regard to Section 2 of the Care Act that outlines local authorities’ role in preventing, reducing or delaying the need for care and support.”
The final paragraph in section 4.17 should be amended to include housing providers and the independent and voluntary sector as an example of partners that local authorities should consider working with when discharging their duty to provide preventative services. Registered providers of social housing are specifically listed under Section 6 of the Care Act (co-operation), have a long track record of building community capital and engaging with communities to prevent, reduce or delay the onset of needs, and the suitability of living accommodation is a key component of the wellbeing principle as set out in Clause 1.

The final sentence of paragraph 4.17 should be amended to:

“Local authorities should consider working not just with traditional public sector partners like health, but also with a range of other providers, including housing providers and the independent and voluntary sector, to engage with communities to understand how to prevent problems from arising.”

Promote well-being in paragraph 4.28

As set out above, we welcome the focus on commissioning in a way that ensures quality services as set out in paragraph 4.28. However we think it would be more effective and action-focused to phrase this section positively to link to the wellbeing duty.

The statement in 4.28 “will not undermine the wellbeing of people who receive care and support” should be amended to

“will promote the wellbeing of people who receive care and support”.

Clarify paragraph 4.37

We welcome paragraph 4.37, which states that local authorities should encourage a genuine choice of service type. However we believe this could be strengthened further by including extra care and supported living in the short list of examples given. These are widely understood types of living accommodation and including them makes the paragraph’s point about qualitatively different offers to residential care more clearly.

4.37 should be amended to read:

“Local authorities should encourage a genuine choice of service type, not only a selection of providers offering similar services, encouraging, for example, a variety of different living options such as shared lives, extra care housing, supported living, support provided at home, and live-in domiciliary care as alternatives to residential care, and low volume and specialist services for people with less common needs.”
Including a wider variety of living options in the list opens up the issue of choice. As the Think Local Act Personal (TLAP) partnership agreement sets out, choice and control can be enabled by “Shaping diverse markets of high quality care and support within every area to meet people’s needs and aspirations, including housing options, micro and social enterprise and user led organisations.”

Amend paragraph 4.41 to ensure that housing is addressed as part of personalisation

The inclusion of “the suitability of living accommodation” in the definition of the wellbeing principle (clause 1) highlights the importance of housing options in supporting an individual’s wellbeing. These are critical factors in personalisation.

The paragraph should be amended to:

“4.41 Local authorities should facilitate the personalisation of care and support services, encouraging services (including more traditional services as well as small, local, specialised and personal assistant services that are highly tailored), to enable people to make meaningful choices and to take control of their support arrangements, regardless of service setting or how their personal budget is managed. The TLAP partnership agreement sets out how shaping markets to meet people’s needs and aspirations, including housing options, can promote choice and control. Alongside the “suitability of living accommodation” in Clause 1 of the Care Act, local authorities should consider how they can encourage the development of housing options that can support choice and control and promote wellbeing. Personalised care and support services should be flexible so as to ensure people have choices over what they are supported with, when and how their support is provided and wherever possible, by whom. The mechanism of Individual Service Funds by service providers, which are applicable to many different service types, can help to secure these kinds of flexibilities for people and providers.”

Amend paragraphs 4.49 & 4.57 to include housing providers

Paragraphs 4.49 and 4.57 set out how local authorities’ engagement with stakeholders in developing plans might look, and who they may talk to.

Alongside housing providers who deliver care services, many housing providers deliver preventative services, have extensive reach in to communities, and are the landlords of many older people who will develop care or support needs in the future. Amending these paragraphs to include housing providers is in line with the duty to co-operate (Section 6) and would ensure

---

1 http://www.thinklocalactpersonal.org.uk/_library/Homepage/PartnershipAgreement_final_2_June.pdf
this valuable role and experience is not missed and enable local authorities to design more integrated and effective plans.

Reflect the importance of housing within integration (4.80)

Paragraph 4.80 sets out the duty of integration within the Health and Social Care Act 2012, and the corresponding duty in the Care Act. Whilst housing is referenced, this paragraph does not currently set out the central importance of housing to integration. Services that are integrated around an individual’s needs and promote their wellbeing are often best delivered through the home. In order to reflect this we propose amending the paragraph to read

“4.80 The Health and Social Care Act 2012 sets out specific obligations for the health system and its relationship with care and support services. It gives a duty to NHS England, clinical commissioning groups, Monitor and Health and Wellbeing Boards to make it easier for health and social care services to work together to improve outcomes for people. Section 3 of the Care Act places a corresponding duty on local authorities to carry out their care and support functions with the aim of integrating services with those provided by the NHS or other health-related services, such as housing. Integrated services built around an individual’s needs are often best delivered through the home. The suitability of living accommodation is a core component of an individual’s well-being and when developing integrated services local authorities should consider the central role of housing within integration. Local authorities should also consider working with appropriate partners to develop integration with services related to care and support such as employment services, benefits and leisure services. Local authorities should prioritise integration activity in areas where there is evidence that effective integration of services materially improves people’s wellbeing, for example, end of life care, and be in line with the priorities of the Better Care Fund, for example, reducing the length of stays in hospitals.”

Response to question 8 of the consultation document

Question 8 of the consultation document asks about any further suggestions of case studies or tools that can assist local authorities in carrying out their market shaping and commissioning activities.

We would suggest the guidance to risk stratification used by NHS England [http://www.england.nhs.uk/wp-content/uploads/2014/02/iq-risk-ccq-gp-2.pdf] could be a useful tool for local authorities. This consists of tools:

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

Local authorities can use risk stratification tools with social care and housing data in their Market Position Statements, thereby gaining understanding of the social determinants of potential care needs. This would enable the development of strategies which are as comprehensive as possible and take account of the myriad of different factors effecting the development of social care needs.

4. Key messages for the guidance

There are a number of key messages and themes for the guidance that need to retained throughout edits and amendments to the drafts. These include:

Focus on outcomes & well-being [4.11, 4.13, 4.16]

It is crucial that the market shaping function is undertaken wellbeing in mind, as otherwise services that are commissioned may not reflect the outcomes individuals with care and support needs want. The following points should be retained to support this:

• 4.11 the central role of well-being to market shaping
• 4.13 the link to the Think Local Act Personal “I” statements in considering outcomes
• 4.16 payments by outcomes systems should not disadvantage smaller and specialist providers.

Commissioning vs procurement [4.3, 4.9]

Commissioning has a significant impact on the quality and diversity of services available in local social care markets. The guidance benefits immensely from the clear definitions set out of market shaping, commissioning, procurement, and contracting. The following points should be retained to ensure the impact of commissioning is considered and that it is more than just procurement, which unfortunately in the current environment is too often the case in many local authorities.

• 4.3 local authorities should review their commissioning and impact this has on market shaping
• 4.9 “Commissioning encompasses procurement but includes the wider set of strategic activities”

Commissioning and quality

The implementation of this duty requires a focus on the quality of services. This is outlined clearly in several places and the following points should be retained:
4.18 The strong focus on promoting quality services and the clear link with wellbeing.

4.21 recognises clearly that “appropriateness is a fundamental part of quality”. This is important because services that are not appropriate to an individual’s situation can undermine their well-being.

The case study set out p45 demonstrates how advice on housing options for an individual with social care needs can be an important part of an appropriate package of support that enables an individual to live independently and promotes their well-being.

4.28 & 4.32 on fee levels, and the impact on training and sustainability of services of setting them too low.

4.88 links to appropriateness. The example of 15 minute home care visits is a helpful illustration of this point.

4.91 links to the Public Services (Social Value) Act 2012, encouraging local authorities to consider using the duties to promote added value and enhance integrated and community services.

Ensuring choice

Choice is an essential driver of markets and in implementing the market shaping duties local authorities need to enable individuals to take choices that promote wellbeing and independent living. Key supporting points are:

4.34 & 4.35 outlines the importance of ensuring people have a genuine choice of service delivered by a range of providers.

4.40 the inclusion of services such as sheltered accommodation and supported living. These services form an important part of the care and support market, and provide a different choice that many individuals value.

4.43 the link to information and advice services and the relevant section of the Care Act. Good quality information and advice are crucial to enabling people to make the right choices about their care and support the promotion of wellbeing.

Market Position Statements

Effective Market Position Statements require a comprehensive understanding of local care and support needs so that a local authority can identify gaps across the market. Joint Strategic Needs Assessments alone will not be able to provide this data. The following points will support local authorities to gain a fuller picture and should therefore be retained:

4.74 Market Position Statements should encourage an on-going dialogue with providers and stakeholders.

4.75 the inclusion of housing information and statistics in Market Position Statements. Identifying housing needs for individuals who may require care or support can help encourage the development of high quality services which can help people live independently and promote their wellbeing.