4. Market shaping and commissioning of adult care and support

This chapter provides guidance on section 5 of the Care Act 2014.

This chapter covers:

- The principles which should underpin market-shaping and commissioning activity:
  - focusing on outcomes and wellbeing;
  - promoting quality services, including through workforce development and remuneration and ensuring appropriately resourced care and support;
  - supporting sustainability;
  - ensuring choice;
  - co-production with partners.
- The steps which local authorities should take to develop and implement local approaches to market-shaping and commissioning:
  - designing strategies that meet local needs;
  - engaging with providers and local communities;
  - understanding the market;
  - facilitating the development of the market;
  - integrating their approach with local partners;
  - securing supply in the market and assuring its quality through contracting.

4.1. High-quality, personalised care and support can only be achieved where there is a vibrant, responsive market of service providers. The role of the local authority is critical to achieving this, both through the actions it takes to directly commission services to meet needs, and the broader understanding and interactions it facilitates with the wider market, for the benefit of all local people and communities.

4.2. The Care Act places new duties on local authorities to facilitate and shape their market for adult care and support as a whole, so that it meets the needs of all people in their area who need care and support, whether arranged or funded by the state, by the individual themselves, or in other ways. The ambition is for local authorities to influence and drive the pace of change for their whole market, leading to a sustainable and diverse range of care and support providers, continuously improving quality
and choice, and delivering better, innovative and cost-effective outcomes that promote the wellbeing of people who need care and support.

4.3. **Local authorities should** review the way they commission services, as this is a prime way to achieve effective market shaping and directly affects services for those whose needs are met by the local authority, including where funded wholly or partly by the state.

4.4. At a time of increasing pressure on public funds, changing patterns of needs, and increasing aspirations of citizens, together with momentum for integrated services, joint commissioning, and choice for individuals, it is suggested that fundamental changes to the way care and support services are arranged may be needed, driven through a transformation of the way services are considered and arranged. Commissioning and market shaping are key levers for local authorities in designing and facilitating a healthy market of quality services.

**Definitions**

4.5. **Market shaping** means the local authority collaborating closely with other relevant partners, including people with care and support needs, carers and families, to facilitate the whole market in its area for care, support and related services. This includes services arranged and paid for by the state through the authority itself, those services paid by the state through direct payments, and those services arranged and paid for by individuals from whatever sources (sometimes called ‘self-funders’), and services paid for by a combination of these sources. Market shaping activity should stimulate a diverse range of appropriate high quality services (both in terms of the types, volumes and quality of services and the types of provider organisation), and ensure the market as a whole remains vibrant and sustainable.

4.6. The core activities of market shaping are to engage with stakeholders to develop understanding of supply and demand and articulate likely trends that reflect people’s evolving needs and aspirations, and based on evidence, to signal to the market the types of services needed now and in the future to meet them, encourage innovation, investment and continuous improvement. It also includes working to ensure that those who purchase their own services are empowered to be effective consumers, for example by providing information and advice. A local authority’s own commissioning practices are likely to have a significant influence on the market to achieve the desired outcomes, but other interventions may be needed, for example, incentivising innovation by third sector providers, possibly through grant funding.

4.7. **Commissioning** is the local authority’s cyclical activity to assess the needs of its local population for care and support services that will be arranged by the authority, then designing, delivering, monitoring and evaluating those services to ensure appropriate outcomes. From the 1990s onwards care services have been increasingly procured from the independent sector (i.e. not directly provided by an authority itself) and covered all services that the authority arranged for people receiving state funding. Since 2007 when personalisation became a mainstream policy, commissioning has also covered activity to ensure that sufficient and appropriate services are available to meet the needs of growing numbers of people with personal budgets and direct payments. This has changed the commissioning role, as purchasing decisions have been increasingly devolved to individuals and families and direct procurement using block contracts has reduced. Commissioning has come to be shaped more by the outcomes commissioners
and individuals identify, rather than volumes of activity expected and commissioners have sought to facilitate flexible arrangements with providers for other forms of service to support choice and control, such as Individual Service Funds (ISFs).

4.8. **Procurement** is the specific functions carried out by the local authority to buy or acquire the services which the local authority has duties to arrange to meet people’s needs who are funded by the state, to agreed quality standards so as to provide effective value for money to the public purse and deliver its commissioning strategy.

4.9. **Contracting** is the means by which that process is made legally binding. Contract management is the process that then ensures that the services continue to be delivered to the agreed quality standards. Commissioning encompasses procurement but includes the wider set of strategic activities.

4.10. This statutory guidance describes at a high level the themes and issues that local authorities should have regard to when carrying out duties to shape their local markets and commission services. Market shaping, commissioning, procurement and contracting are inter-related activities and the themes of this guidance will apply to each to a greater or lesser extent depending on the specific activity.

**Principles of market-shaping and commissioning**

**Focusing on outcomes**

4.11. Local authorities **must** ensure that the promotion of the wellbeing of individuals who need care and support, and the wellbeing of carers, and the outcomes they require, are central to all activities relating to care and support, emphasising the importance of enabling people to stay independent for as long as possible.

4.12. To meet this overarching duty when exercising market-shaping and commissioning functions, local authorities will need to understand the outcomes which matter most to people in their area, and demonstrate that these outcomes are at the heart of their local strategies and approaches.

4.13. Local authorities **should** consider the Adult Social Care Outcomes Framework (ASCOF),16 in addition to any locally-collected information on outcomes and experiences (for example, from local consumer research), when framing outcomes for their locality and groups of people with care and support needs. Local authorities **should** have regard to guidance from the Think Local Act Personal (TLAP) partnership when framing outcomes for individuals, groups and their local population, in particular the Making It Real “I” statements, which set out what good personalised care and support should look like from the perspective of people with care and support needs, carers and family members.17 Outcomes should be considered both in terms of outcomes for individuals and outcomes for groups of people and populations.

4.14. Local authorities **should** consider analysing and presenting local needs for services in terms of outcomes required. Local authorities **should** ensure that achieving better outcomes is central to its commissioning strategy and practices, and **should** be able to demonstrate that they are moving to contracting in a way that has an outcome basis at its heart. Local authorities **should** consider emerging best practice on outcomes-based commissioning.

---


17 http://www.thinklocalactpersonal.org.uk/
4.15. **Outcomes-based services** mean developing service arrangements that are defined on the basis of an agreed set of outcomes either for an individual or a group of people. Moving more to an outcomes-based approach therefore means changing the way services are bought: from units of provision to meet a specified need (for example, hours of care provided) to what is required to ensure specified outcomes for people are met. The approach should emphasise prevention, enablement, ways of reducing social isolation and promotion of independence as ways of achieving and exceeding desired outcomes, as well as choice in how people’s needs are met. Outcomes should be used as a principal measure for quality assurance of services.

4.16. In encouraging outcomes-based services, consideration should be given to how services are paid for. Local authorities **should consider** incorporating elements of “payments-for-outcomes” mechanisms, where practical, to emphasise and embed this commissioning approach which is based on specifying the outcomes to be achieved, rather than the service outputs to be delivered.\(^\text{18}\) Whilst payments by outcomes may be theoretically the most appropriate approach for outcomes-based services, it is recognised that proxies for outcomes may be required to make the approach practical. The design of any mechanism should, however, be introduced in cooperation with stakeholders and partners to ensure it is sustainable and ensure that innovation, and individual choice and control are not undermined. Any move to payments by outcomes should be achieved such that smaller, specialist, voluntary sector and community-based providers are not excluded from markets or disadvantaged.

4.17. Local authorities should 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. This includes how the authority facilitates and commissions services and how it works with other local organisations to build community capital and make the most of the skills and resources already available in the area. Local authorities **should consider** working not just with traditional public sector partners like health, but also with a range of other partners to engage with communities to understand how to prevent problems from arising.\(^\text{19}\)

**Promoting quality**

4.18. Local authorities **must** facilitate markets to offer continuously improving, high-quality, appropriate and innovative services, including fostering a workforce which underpins the market. The quality of services provided directly affect the wellbeing of people receiving care and support, and that of carers, and it is important to establish agreed understandable criteria and to ensure they are met.

4.19. When considering the quality of services, local authorities should be mindful of the capacity, capability, timeliness, continuity, reliability and flexibility of services delivered to support well-being, using the definitions that underpin the CQC’s fundamental standards of care as a minimum, and having regard to the ASCOF framework of population outcomes. High quality services should enable people who need care and

---

\(^\text{18}\) Insert link to examples of outcome-based commissioning and relevant studies on cost-effectiveness – The Commissioning Standards work should identify these – expected by October 2014.

\(^\text{19}\) An example of local authority commissioning preventative services effectively, taken from the Leeds Market Position Statement on Leeds Community Equipment Service, Telecare and Care Ring Services, can be found at: [http://www.leeds.gov.uk/docs/LeedsAdultsMPS2012.pdf](http://www.leeds.gov.uk/docs/LeedsAdultsMPS2012.pdf)
support to meet appropriate personal outcome measures.

4.20. Local authorities should also consider other relevant national standards including those that are aspirational, for example, any developed by the National Institute of Health and Care Excellence (NICE).

4.21. Local authorities should encourage a wide range of service provision to ensure that people have a choice of appropriate services; appropriateness is a fundamental part of quality. For example, a working age person should be able to choose care and support tailored for their situation, and not be faced with only a choice of facilities designed for older people, as this is unlikely to be appropriate to their situation, regardless of how high quality the facilities may be in their own contexts.

4.22. When arranging services themselves, local authorities must ensure their commissioning practices and the services delivered on their behalf comply with the requirements of the Equality Act 2010, and do not discriminate against people with protected characteristics. When shaping markets for services, local authorities should work to ensure compliance with this Act for services provided in their area that are not arranged and/or paid for by them.20

4.23. Local authorities should encourage services that respond to the fluctuations and changes in people’s care and support needs and support the transition of services throughout the stages of their lives to ensure the services provided remain appropriate. This is particularly important, for example, for young people with care and support needs and young carers transitioning to adulthood.

For example: Ensuring provision of appropriate services

When young people move from children’s to adult care and support or providing support for situations where young carers become adults. For instance, many young people with learning disabilities leave full-time education at around this age and require new forms of care and support to live independently thereafter. Ensuring that services are made available to meet those needs is better for the quality of life of the young person in question. This could include things such as job training, developing friendships or advice on housing options. It is equally important to think about ways of supporting carers at this time: some parent carers sometimes have to give up paid work after their child leaves full time education. Loss of paid employment can have a significant impact on the carer’s wellbeing and self-esteem as well as a significant impact on the family’s financial circumstances. Similar issues can affect young carers. Taking a whole family approach to care and support planning that sets out a “five-day offer” for a young person and support for a carer to manage an increased caring role (that ideally allows them to stay in paid work if they wish to do so) can help families manage the transition and save money by avoiding unwanted out-of-county placements.

4.24. Local authorities should commission services having regard to the cost-effectiveness and value for money that the services offer for public funds. The Local Government Association Adult Social Care Efficiency Programme has advice on these issues.21

20 https://www.gov.uk/equality-act-2010-guidance

21 See: http://www.local.gov.uk/productivity/-/journal_content/56/10180/3371097/ARTICLE
4.25. People working in the care sector play a central role in providing high quality services. Local authorities **must consider** how to help foster and enhance this vital workforce to underpin effective, high quality services.\(^{22}\)

4.26. Local authorities **should consider**, in particular, how to encourage training and development for the care and support workforce through, for example, standards recommended by Skills for Care, and the National Skills Academy for Social Care,\(^{23}\) and have regard to funding available through grants to support the training of care workers in the independent sector.\(^{24}\)

4.27. When commissioning services, local authorities **should assure themselves** and have evidence that service providers deliver services through staff remunerated so as to retain an effective workforce. Remuneration should be at least sufficient to comply with the national minimum wage legislation for hourly pay or equivalent salary. This will include appropriate remuneration for any time spent travelling between appointments. Guidance on these issues can be found at the HMRC website.\(^{25}\)

4.28. When commissioning services, local authorities **should assure themselves** and have evidence that contract terms, conditions and fee levels for care and support services are appropriate to provide the delivery of the agreed care packages with agreed quality of care, that will not undermine the wellbeing of people who receive care and support, or compromise the service provider’s ability to meet the statutory obligations to pay at least minimum wages and provide effective training and development of staff. Local authorities should have regard to guidance on minimum fee levels necessary to provide this assurance.\(^{26,27,28}\)

4.29. Local authorities **should ensure** that they themselves have functions to fulfil duties on market shaping and commissioning that are fit for purpose, with sufficient capacity and capability of trained and qualified staff to meet the requirements set out in the Care Act and this statutory guidance. In particular, local authorities should encourage relevant staff to be trained or developed to meet the National Skills Academy standards and programmes of training for care and support commissioners ‘Commissioning Now’, or equivalent.\(^{29}\)

### Supporting sustainability

4.30. Local authorities **must** work to develop markets for care and support that – whilst recognising that individual providers may exit the market from time to time – ensure the overall provision of services remains healthy in terms of the adequate provision of high

---

\(^{22}\) How to commission the adult social care workforce – North-West Joint Improvement Programme: http://ipc.brookes.ac.uk/publications/pdf/How_to_Commission_the_Adult_Social_Care_Workforce.pdf

\(^{23}\) http://www.skillsforcare.org.uk/Home.aspx; https://www.nsasocialcare.co.uk/

\(^{24}\) An example of collaborative training by Surrey, East Sussex & Brighton & Hove can be found at: http://www.eastsussex.gov.uk/nr/rdonlyres/07194ab7-15a9-44b4-9f74-91c39fa479c5/0/esccmicroprioviderguidecupdatedatejan2013.pdf


\(^{26}\) UKHCA Minimum Price for Homecare tool: http://www.ukhca.co.uk/pdfs/AMinimumPriceforHomecareVersion1020140202.pdf

\(^{27}\) Laing and Buisson toolkit to understand fair price for residential care: https://www.laingbuisson.co.uk/portals/1/media Packs/Fact_Sheets/Fair_Price_ThrdEd_2008.pdf

\(^{28}\) ADASS paying for care calculator: http://www.adass.org.uk/Paying-for-care-calculator/

\(^{29}\) See https://www.nsasocialcare.co.uk/programmes/commissioning-now
quality care and support needed to meet expected needs. This will ensure that there are a range of appropriate and high quality providers and services for people to choose from.

4.31. Local authorities should understand the business environment of the providers offering services in their area and seek to help providers facing challenges and understand their risks. Where needed, based on expected trends, local authorities should consider encouraging service providers to adjust the extent and types of service provision. This could include signalling to the market as a whole the likely need to extend or expand services, encourage new entrants to the market in their area, or if appropriate, signal likely decrease in needs – for example, drawing attention to a possible reduction in residential care needs, and changes in demand resulting from increasing uptake of direct payments. The process of developing and articulating a Market Position Statement or equivalent should be central to this process.

4.32. Local authorities should consider the impact of their own activities on the market as a whole, in particular the potential impact of their commissioning decisions and where they may also be a supplier of care and support. The local authority may be the most significant purchaser of care and support in an area, and therefore its approach to commissioning will have an impact beyond those services which it contracts. Local authorities should not undertake any actions which may threaten the sustainability of the market as a whole – for example, setting standard fee levels below an amount which is sustainable for providers in the long-term.

4.33. Local authorities should have effective communications and relationships with providers in their area that should minimise risks of unexpected closures and failures, and have effective interaction and communication with the Care Quality Commission (CQC) about the larger and most difficult to replace providers that CQC will provide financial oversight for. Where it is apparent to a local authority that a provider is likely to fail financially, either through its own intelligence or through information from the CQC, the authority must prepare to step in to ensure continuity of care and support for people who have their care and support provided by that provider (see chapter 5 on managing provider failure).

Ensuring choice

4.34. Local authorities must encourage a variety of different providers and different types of services. This is important in order to facilitate an effective open market, driving quality and cost-effectiveness so as to provide genuine choice to meet the needs of local people who need care and support services.

4.35. Local authorities must encourage a range of different types of service provider organisations to ensure people have a genuine choice of different types of service. This will include independent private providers, third sector and voluntary and community based organisations, including user-led organisations, mutual and small businesses; recognising that the different underpinning philosophies and style of service of these organisations may be more suited to some people with care and support needs. Local authorities should consider supporting providers or directly intervening to promote an appropriate balance of provision between types of provider.

4.36. Where a local authority develops approved lists and frameworks that are used to limit the number of providers they work with, for example within a specific geographical
area or for a particular service type, the local authority must have regard to ensuring that a there is still a reasonable choice for people who need care and support.

4.37. 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 and live-in domiciliary care as alternatives to residential care, and low volume and specialist services for people with less common needs.

4.38. Choice for people who need care and support and carers should be interpreted widely. Local authorities should encourage choice over the way services are delivered, examples would include: developing arrangements so that care can be shared between an unpaid carer or relative and a paid care worker, a choice over when a service is delivered, choice over who is a person’s key care worker, arranging for providers to collaborate to ensure the right provision is available, for example, a private provider and a voluntary organisation working together, choice over when a service is delivered.

4.39. Local authorities must have regard to ensuring a sufficiency of provision – in terms of both capacity and capability – to meet anticipated needs for all people in their area needing care and support – regardless of how they are funded. This will include regularly reviewing trends in needs – including multiple and complex needs, outcomes sought and achieved, and trends in supply, anticipating the effects and trends in prevention and community-based assets, and through understanding and encouraging changes in the supply of services and providers’ business and investment decisions.

4.40. When considering the sufficiency and diversity of service provision, local authorities should consider all types of service that are required to provide care and support for the local authority’s population, including, for example, domiciliary (home) care, residential care, nursing care, live-in care services, specialist care, support for carers, sheltered accommodation and supported living, shared lives services, community support, counselling, social work, information, advocacy and advice services, and support services and universal and community services that promote prevention. This will include keeping up to date with innovations and developments in services, networking through for example, the Association of Directors of Adult Social Services (ADASS), TLAP, and the Local Government Association (LGA) etc.

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. 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.

---


31 http://www.thinklocalactpersonal.org.uk/Browse/commissioning/servicefunds/
4.42. Local authorities should help people who fund their own services or receive direct payments, to ‘micro-commission’ care and support services and/or to pool their budgets, and should ensure a supporting infrastructure is available to help with these activities. Many local authorities, for example, are utilising web-based systems such as e-Marketplaces for people who are funding their own care or are receiving direct payments to be able to search for, consider and buy care and support services on-line, consider joint purchases with others, offering information and advice about, for example, the costs and quality of services and information to support safeguarding. This activity should support people to become more effective consumers, helping to match people’s wider needs with services.

4.43. Local authorities must facilitate information and advice to support people’s choices for care and support. This should include where appropriate through services to help people with care and support needs understand and access the systems and processes involved and to make effective choices. This is a key aspect of the new duty to establish and maintain a universal information and advice service locally as set out in Section 4 of the Care Act. Information and advice services should be reviewed for effectiveness using people’s experiences and feedback; this feedback forms part of the overall information a local authority considers about people’s needs and aspirations.

4.44. Local authorities should encourage preventative, enablement and support services, including support for carers to make caring more sustainable, such as interpreters, signers and communicator guides, and other support services such as ‘telecare’, home maintenance and gardening that may assist people achieve more independence and supports the outcomes they want.

4.45. Local authorities should encourage flexible services to be developed and made available that support people who need care and support, and carers who need support, to take part in work, education or training. Services should be encouraged that allow carers who live in one local authority area but care for someone in another local authority area to access services easily, bearing in mind guidance on ordinary residence.

Co-production with stakeholders

4.46. Local authorities should pursue the principle that market shaping and commissioning should be shared endeavours, with commissioners working alongside providers and people with care and support needs, carers, family members and the public to find shared and agreed solutions. This should be in line with the Building Capacity and Partnership in Care Agreement.

Developing local strategies

4.47. Commissioning and market shaping should be fundamental means for local authorities to facilitate effective services in their area and it is important that authorities develop local strategies for how they exercise these functions, and align these with wider

---

32 http://ipc.brookes.ac.uk/publications/pdf/Safeguarding_Vulnerable_Adults_through_better_commissioning.pdf
33 http://www.hertsdirect.org/services/emarketplace/
34 http://www.pssru.ac.uk/pdf/dp2713.pdf
35 FOOTNOTE TEXT MISSING
corporate planning based on evidence. Local authorities **should** have in place published strategies that include plans that show how their legislative duties, corporate plans, analysis of local needs and requirements (integrated with the Joint Strategic Needs Assessment), thorough engagement with people, carers and families, market and supply analysis, market structuring and interventions, resource allocations and procurement and contract management activities translate (now and in future) into appropriate high quality services that deliver identified outcomes for the people in their area and address any identified gaps.\(^{37}\)

4.48. Since 2007 there has been a duty on local authorities and clinical commissioning groups, through health and wellbeing boards, to undertake Joint Strategic Needs Assessments (JSNA). JSNA is a process that assesses and maps the needs and demand for health and care and support, supports the development of joint Health and Wellbeing Strategies to address needs, understands community assets and informs commissioning of local health and care and support services that together with community assets meet needs. Therefore, market shaping and commissioning intentions **should** be cross-referenced to JSNA, and should be informed by an understanding of the needs and aspirations of the population and how services will adapt to meet them. Strategies **should** be informed and emphasise preventative services that encourage independence and wellbeing, delaying or preventing the need for acute interventions. Statutory guidance on JSNA and Joint Health and Wellbeing Strategies was published in March 2013.\(^{38}\) The ambition is for commissioning to be an integral part of understanding and delivering the whole health and care economy.

4.49. Plans at all levels to deliver this strategy should be developed by local authorities in partnership and collaboration with stakeholders, in particular: provider organisations, people needing care and support themselves (through for example, consumer research), carers, health professionals, care and support managers and social workers (and representative organisations for these groups), independent advocates, and wider citizens to reflect the range and diversity of communities and people with specific needs. A fully co-produced approach will stress the value of meaningful engagement with people at all stages, through design, delivery and evaluation, rather than simply as ‘feedback’. Local authorities **should** publish and make available their local strategies for market shaping and commissioning, to support local accountability and engagement with the provider market and the public.

4.50. It is suggested that a local authority can best commence its duties under Sections 5 (market shaping and commissioning) and 48-57 (market oversight and provider failure) of the Care Act on by developing with providers and stakeholders a published Market Position Statement.\(^{39}\)

4.51. Local authorities **should** review strategies related to care and support together with stakeholders to ensure they remain fit for purpose, learn lessons, and

---

37 Examples of local authority strategies, development with stakeholders, links to JSNA, review processes, roles & responsibilities: http://www.hscic.gov.uk/jsna
http://www.thinklocalactpersonal.org.uk/_library/Resources/Personalisation/Personalisation_advice/298683_Uses_of_Resources.pdf


39 http://ipc.brookes.ac.uk/dcmqc.html
adapt to incorporate emerging best practice, noting that peer review has a strong track record in driving improvement. It is suggested that reporting against strategies for care and support should form part of the local authority’s Local Account.40

4.52. Many public sector bodies, including local authorities, have radically transformed services by reconsidering commissioning in a strategic context. The Government’s Commissioning Academy 41 is working to promote such transformational approaches and local authorities should have regard to the emerging best practice it is producing.

4.53. Developing a diverse market in care and support services can boost employment and create opportunities for local economic growth, through for example, increasing employment opportunities for working-age people receiving care and carers, and developing the capacity of the care workforce. Local authorities should consider how their strategies related to care and support can be embedded in wider local growth strategies, for example, engaging care providers in local enterprise partnerships, as in Poole.42

4.54. Recognising that changes to adult care and support are taking place at a time of the need to deliver services from constrained resources, local authorities should have regard to best practice on efficiency and value for money, in particular the Local Government Association Adult Social Care Efficiency Programme.43

4.55. Local authority strategies should adhere to general standards, relevant laws and guidance, including the Committee of Standards in Public Life principles of accountability, regularity and ensuring value for money alongside quality,44 and the HM Treasury guidance on Managing Public Money.

4.56. Local authorities should develop standards on transparency and accountability to ensure citizens are able to contribute to and understand policy and review delivery. Standards should be in line with the codes of practice drawn up by the Department of Communities and Local Government.45

Engaging with providers and local communities

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. While the duties under section 5 of the Care Act fall upon local authorities, successful market shaping is a shared endeavour that requires a range of coordinated action by commissioners and providers, working together with the citizen at the centre. Local authorities should engage and cooperate with stakeholders, in particular: provider organisations, people

---

41 https://www.gov.uk/the-commissioning-academy-information
43 http://www.local.gov.uk/productivity/journal-content/56/10180/3371097/ARTICLE
needing care and support themselves and their representative organisations, carers and their representative organisations, health professionals, social care managers and social workers, independent advocates, and wider citizens to reflect the range and diversity of communities and people with specific needs. Local authorities should arrange engagement to include hard-to-reach individuals and groups, including those who have communication issues and involving representatives of those who lack mental capacity.

4.58. Engagement with people needing care and support, people likely to need care and support, carers, independent advocates, families and friends, should emphasise understanding the needs of individuals and specific communities, what aspirations people have, what outcomes they would like to achieve, their views on existing services and how they would like services to be delivered in the future. It should also seek to identify the types of support and resources or facilities available in the local community which may be relevant for meeting care and support needs, to help understand and build community capacity to reinforce the more formal, regulated provider market. In determining an approach to engagement, local authorities should consider methods that enable people to contribute meaningfully to:

- setting the strategic direction for market shaping and commissioning;
- engaging in planning – using methods that support people to identify the problem and the solution, rather than relying on “downstream” consultation;
- identifying outcomes and set priorities for specific services;
- setting measures of success and monitor on-going service delivery;
- playing a leading role throughout tendering and procurement processes, from developing specifications to evaluating bids and selecting preferred providers;
- contributing to reviews of services and strategies that relate to decommissioning decisions and areas for new investment.

4.59. Engagement with service providers should emphasise an understanding of the organisation’s strategies, risks, plans, and encourage building trusting relationships and fostering improvement and innovation to better meet the needs of people in the area.

4.60. Local authorities should ensure that active engagement and consultation with local people is built into the development and review of their strategies for market shaping and commissioning, and is demonstrated to support local accountability (for example, via the Local Account).

4.61. Local authorities should exercise care in engaging with provider organisations to ensure fair play and necessary confidentiality. The Think Local Act Personal (TLAP) partnership has produced specific guidance that may assist in the process – Stronger Partnerships for Better Outcomes.

4.62. Local authorities should make available to providers available routes to register concerns or complaints about engagement and commissioning activities.

---

46 Example of engagement with people using care and support: Warwickshire transformation assembly http://www.warwickshire.gov.uk/transformationassembly

Understanding the market

4.63. Local authorities must understand local markets and develop knowledge of current and future needs for care and support services, and understand providers’ businesses. This is important so that authorities can articulate likely trends in needs and signal to the market the likely future demand for different types of services for their market as a whole, and understand the local needs and business environment to support effective commissioning.

4.64. Local authorities (through an engagement process, in concert with commissioners for other services where appropriate) should understand and articulate the characteristics of current and future needs for services with underpinning demographics, drivers and trends, the aspirations, priorities and preferences of those who will need care and support, their families and carers, and the care and support needs of people as they progress through their lives. This should include an understanding of people with existing care needs drawn from assessment records, new care and support needs, those whose care and support needs will transition from young people’s services to adult services, those transitioning from working-age adults to services for older people, people whose care and support needs may fluctuate, people moving to higher needs and specialised care and support, and those that will no longer need care and support. It should include information and analysis of multiple and complex conditions.

4.65. Local authorities should have in place robust methods to collect, analyse and extrapolate this information about care and support needs, including multiple and complex needs, and providers’ intentions to deliver support, with a view over an appropriate timescale – likely to be at least 5 years into the future, with alignment to other strategic timeframes. Data collection should include information on the quality of services provided in order to support local authority duties to foster continuous improvement, including feedback from people who receive care, their families and carers.

4.66. Local authorities should include in their engagement and analysis, services and support provided by voluntary, community services and other groups that make up ‘community assets’ and plan strategically to encourage, make best use of and grow these essential activities to integrate them with formal care and support services.

4.67. Local authorities should also seek to understand trends and changes to the levels of support that come from the invaluable unpaid work of carers, and seek to develop support for and encourage carers.

4.68. The assessment of needs should include an understanding of people who are or are likely to be wholly or partly state funded, people who are or are likely to be self-funding, and an analysis of those self-funding people who are likely to move to state funding in the future. This will also support preparation for implementation of funding reforms from 2016/17, as such individuals will be ‘metered’ towards and reach the cap on care costs. It should also include an understanding of the likely demand for state-funded services that the local authority will need to commission directly, and state-funded services likely to be provided through direct payments and require individuals to ‘micro-commission’ services.

Local authorities should also consider the extent to which people receiving services

48 http://ipc.brookes.ac.uk/services/documents/DCMQC_MPS_example.pdf
Request for consultation: are there other examples of how to gather market information
funded by the state may wish to ‘top up’ their provision to receive extra services or premium services – that is, the assessment of likely demand should be for services that people are likely to need and be prepared to pay through top ups.

4.69. The assessment of needs should be integrated with the process of developing, refining and articulating a local authority’s Joint Strategic Needs Assessment. Where appropriate, needs should be articulated on an outcomes basis.

4.70. In order to gather the necessary information to shape its market, local authorities should engage with providers (including the local authority itself if it directly provides services) to seek to understand and model current and future levels of service provision supply, the potential for change in supply, and opportunities for change in the types of services provided and innovation possible to deliver better quality services and greater value for money. Local authorities should understand the characteristics of providers’ businesses, their business models, market concentration, investment plans etc. Information about both supply and expected demand for services should be made available publicly to help facilitate the market and empower communities and citizens when considering care and support.

4.71. Assessment of supply and potential demand should include an awareness and understanding of current and future service provision and potential demand from outside the local authority area where this is appropriate, for example in considering services to meet highly specialised and complex needs, care and support may not be available in the local authority area, but only from a small number of specialised providers in the country.

Facilitating the development of the market

4.72. Local authorities should collaborate with stakeholders and providers to bring together information about needs and demands for care and support together with that about future supply, to understand for their whole market the implications for service delivery. This will include understanding and signalling to the market as a whole the need for the market to change to meet expected trends in needs, adapt to enhance diversity, stability and sustainability, and consider geographic challenges for particular areas. To this picture, local authorities should add their own commissioning strategy and future likely resourcing for people receiving state-funding.

4.73. Local authorities should consider how to support and empower effective purchasing decisions by people who self-fund care or purchase services through direct payments, recognising that this can help deliver a more effective and responsive local market.

4.74. Local authorities should ensure that the market has sufficient signals, intelligence and understanding to react effectively and meet demand, a process often referred to as market structuring or signalling. Local authorities should publish, be transparent and engage with providers and stakeholders about the needs and supply analysis to assist this signalling. 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. A Market Position Statement or equivalent is intended to encourage a continuing dialogue between a local authority, stakeholders and providers where that dialogue and resulting enhanced understanding by all parties is an important element of signalling to the market.
4.75. A Market Position Statement or equivalent document should contain information on: the local authority’s direction of travel and policy intent, key information and statistics on needs, demand and trends, (including for specialised services, personalisation, integration, housing, community services, information services and advocacy, and carers’ services), information from consumer research and other sources about people’s needs and wants, information to put the authority’s needs in a national context, an indication of current and future authority resourcing, a summary of supply and demand, the authority’s ambitions for quality improvements and new types of services and innovations, and details or cross-references to the local authority’s own commissioning strategies and practices.

4.76. Developing and then making publicly available a Market Position Statement is one way a local authority can meet its duties to make available information about the local market, and demonstrates activity to meet the other parts of Section 5 of the Act.

4.77. As part of developing and publishing a document like a Market Position Statement, local authorities should engage with stakeholders and partners to structure their markets. This could include: discussions with potential providers, actively promoting best practice and models of care and support, understanding the business planning cycles of providers, aligning interactions and supporting the provider’s business planning, identifying and addressing barriers to market entry for new providers, facilitating entry to the market through advice and information, streamlining the authority’s own procurement processes, promoting diversification of provider organisations, working with providers on an ‘open-book accounting’ approach to cost current and future services and ensure provider sustainability, supporting providers through wider local authority activity – planning, business support and regeneration.

4.78. Local authorities may consider that market structuring activity – signalling to the market and providing assistance – is not achieving the strategic aims as quickly or as effectively as needed, and may wish to consider more direct interventions in the market. Market interventions may also be planned as part of the market shaping and commissioning strategies where there is an immediate need for intervention.

4.79. Market interventions could for example include: refocusing local authority business support initiatives onto the care and support sector, exploring how local care and support projects could attract capital investments and support and what guarantees may be needed, encouraging and supporting social enterprises, micro-enterprises, Community Interest Companies, and User-Led Organisations, exploring planning barriers and using planning law, offering access to training and development opportunities.
Promoting integration with local partners

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. Local authorities should also consider working with appropriate partners to develop integration with services related to care and support such as housing, 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.

4.81. Local authorities should work towards providing integrated care and support, providing services that work together to provide better outcomes for individuals who need care and support and enhancing their wellbeing. Local authorities must have regard to guidance\(^51\) that has been co-produced that sets out how local areas can use existing structures for integrating care and support, encouraging health and care organisations to work together to meet people’s needs.

4.82. Local authorities should consider with partners, the enabling activities, functions and processes that may facilitate effective integrated services.\(^52\) These will include consideration of: joint commissioning strategies, joint funding, pooled budgets, lead commissioning, and collaborative commissioning.

Securing supply in the market and assuring its quality and value for money through contracting

4.83. Local authorities should consider best practice on commissioning services, for example the NAO guidance\(^53\) to ensure they deliver quality services with value for money.

4.84. Decommissioning and replacing services represents a particular challenge and should be carried out so as to maintain quality and service delivery that supports the wellbeing of people who need care and support and carers, and guards against the risk of a discontinuity of care and support for those receiving services.\(^54\)\(^55\) For example, multiple contracts terminating around the same time may destabilise local markets if established providers lose significant business rapidly and staff do not transfer smoothly to new providers.

4.85. A local authority’s own commissioning should be delivered through a professional

---

\(^{51}\) https://www.gov.uk/government/publications/integrated-care

\(^{52}\) Example of Bexley LA and CCG joint commissioning of preventative services: http://www.bexley.gov.uk/CHttpHandler.ashx?id=12085&p=0

\(^{53}\) http://www.nao.org.uk/successful-commissioning/

\(^{54}\) http://www.nao.org.uk/decommissioning/

\(^{55}\) http://ipc.brookes.ac.uk/publications/pdf/Decommissioning_and_reconfiguring_services.pdf
4. Market shaping and commissioning of adult care and support

... and effective procurement, tendering and contract management, evaluation and decommissioning process that must be focussed on providing appropriate high quality services to individuals to support their wellbeing and supporting the strategies for market shaping and commissioning, including all the themes set out in this guidance.

4.86. Local authorities should ensure that they understand relevant procurement legislation, and that their procurement arrangements are consistent with such legislation and best practice. Local authorities should be aware that there is significant flexibility in procurement practices to support effective engagement with provider organisations and support innovation in service delivery, potentially reducing risks and leading to cost-savings. The Office of Fair Trading has produced guidance to help public purchasers understand the flexibilities so as to support service transformations through better commissioning.

4.87. Local authorities should ensure that their procurement and contract management systems provide direct and effective links to care service managers and social workers to ensure the outcomes of service delivery matches individual’s care and support needs.

4.88. Local authorities should ensure that where they arrange services, the assessed needs of a person with eligible care and support needs is translated into effective, appropriate commissioned services that are adequately resourced. For example, short home-care visits of 15 minutes or less would not routinely be appropriate for people with intimate care needs, though such visits may be appropriate for services like checking whether medicine has been taken, or where specifically requested by people receiving care.

4.89. When commissioning services, local authorities should undertake due diligence about the effectiveness of potential providers to deliver services to agreed criteria for quality, and should assure themselves that any recent breaches of regulatory standards or relevant legislation by a potential provider have been corrected before considering them during tendering processes. For example, where a provider has previously been in breach of national minimum wage legislation, a local authority should consider every legal means of excluding them from the tendering process.

4.90. Contracts should incentivise value for money, sustainability, innovation and continuous improvement in quality and actively reward improvement and added social value. Contracts and contract management must manage and eliminate poor performance and quality by providers and recognise excellence.

4.91. Local authorities are under a duty to consider added social value when letting contracts through the Public Services (Social Value) Act 2012 and are required to consider how the services they procure, above relevant financial thresholds, might improve the economic, social and environmental well-being of the area. Local authorities should consider using these duties to promote added value in care and support both when letting contracts to deliver care and support, and for wider goods and services. This should include considering whether integrated services, voluntary and community services and ‘community capital’ could be enhanced.

4.92. All services delivered should adhere to national quality standards, with procedures in place to assure quality, safeguarding,


consider complaints and commendations, and continuing value for money, referencing the CQC standards for quality and CQC quality ratings.

4.93. Local authorities may consider delegating some forms of contracting to brokers and people who use care and support to support personal choice for people taking direct payments, with appropriate systems in place to underpin the delivery of safe, effective appropriate high quality services through such routes. Local authorities should also consider providing support to people who wish to use direct payments to help them make effective decisions.

4.94. Local authority procurement and contract management activities should seek to minimise burdens on provider organisations and reduce duplications, where appropriate, using and sharing information, with for example the Care Quality Commission.

4.95. Recognising that procurement is taking place against a backdrop of significant demand on commissioners to achieve improved value for money and make efficiencies, local authorities should consider emerging practice on achieving efficiencies without undermining the quality of care.

Further information/best practice

4.96. The Department of Health funded a programme in 2013/14 to support local authorities prepare for market shaping duties; further information is available at the website for the Developing Care Markets for Quality & Choice programme website.

The Department is also funding a project to develop commissioning standards for local authorities that will deliver guidance and standards by December 2014.

4.97. Both the Developing Care Markets programme and the commissioning standards and guidance will develop the themes presented in this statutory guidance and will themselves reference case studies of best practice and support tools that demonstrate how these themes have been introduced and delivered effectively.

---

59 http://www.local.gov.uk/productivity/-/journal_content/56/10180/3371097/ARTICLE
60 http://ipc.brookes.ac.uk/dcmqc.html