



**ADULTS AND COMMUNITIES OVERVIEW AND SCRUTINY COMMITTEE**  
**11 NOVEMBER 2019**

**FAIR OUTCOMES POLICY FOR ADULT SOCIAL CARE**

**REPORT OF THE DIRECTOR OF ADULTS AND COMMUNITIES**

**Purpose of Report**

- 1 The purpose of this report is to advise the Adults and Communities Overview and Scrutiny Committee of forthcoming engagement on a proposed rewording of the existing Cost Effective Care Policy 2015, and its retitling for clarity as a Fair Outcomes Policy.

**Recommendations**

- 2 It is recommended that Adults and Communities Overview and Scrutiny Committee notes the forthcoming engagement on the Fair Outcomes Policy 2020, which is attached at Appendix A.

**Reasons for Recommendations**

- 3 The draft Fair Outcomes Policy 2020 updates the current Cost Effective Care Policy 2015. The policy outlines the County Council's approach to assessment of need and the provision of a personal budget for adults who may require social care support, ensuring that a person's wellbeing is considered alongside the cost of the proposed care and support. The imminent consultation, which will begin during the week commencing 11 November 2019, will allow the public and stakeholders to consider and comment on the proposals. The views expressed will be taken into account in producing the final draft version for Cabinet's consideration on 14 January 2020.

**Background**

- 4 Following public and stakeholder consultation and its subsequent approval by the Cabinet on 13 October 2014, the County Council's Cost Effective Care Policy was implemented in 2015.
- 5 In order to refresh the existing content, the following clarifying changes are reflected in the revised draft Policy which:
  - highlights that a person's *wellbeing is paramount* to the decision-making for care and support; workers will only consider cost once needs and wellbeing considerations have been met;

- states that decisions are made on a case by case basis with the aim of delivering *good outcomes for the service user alongside best value* for the County Council;
- emphasises *that there is no cap on the cost of care* and that personal budgets will not be reduced to meet a defined level of expenditure;
- *includes carers*, to ensure equity amongst all service user groups, even though carers do not have to pay for their care or support;
- has the changed name of 'Fair Outcomes Policy' to better reflect its intention in *ensuring fair outcomes* for individuals, and fairness in the overall provision of funded care and support.

6 The draft Policy aims to describe the existing arrangements in clearer terms but is not a change to current policy. However, in the interests of ensuring that the public, customers and stakeholders are able to express their views on the document, engagement will be undertaken over the weeks prior to Christmas. The revised policy, together with the results of the engagement, will be brought to Cabinet on 14 January 2020 for its consideration and approval.

### **Policy Framework and Previous Decisions**

- 7 The Cost Effective Care Policy 2015 was approved by Cabinet on 13 October 2014 following a public and stakeholder consultation. It describes the County Council's duties in providing care and support for people who have needs which meet the national eligibility framework, as set out in the Care and Support (Eligibility Criteria) Regulations 2014.
- 8 The Council is presently developing a draft Adults and Communities Strategy 2020-24. The draft Strategy will sit under the County Council's Strategic Plan for 2018-22 'Working Together for the Benefit of Everyone' and sets out how the Adults and Communities Department will contribute to the delivery and achievement of the Council's five strategic outcomes.

### **Resource Implications**

- 9 The County Council has a duty to meet the assessed social care needs of Leicestershire residents. The Policy will enable the Council to continue to work with service users and their families to identify ways to meet their care and support needs within the funding available to the Council.

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**Adults and Communities Department  
Draft Fair Outcomes Policy for Adult Social Care 2020**

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## **Purpose**

This policy describes existing practice in line with Leicestershire County Council's (LCC) duties under the Care Act 2014. It is an update to the *Cost Effective Care policy* (2015).

The purpose of this policy is to ensure:

- that the tasks of adult social care assessment, care and support planning and review are undertaken in a manner that is always compliant with LCC's duties under the Care Act 2014;
- fair outcomes and equity in the provision of funded care and support;
- that LCC's duties can be achieved in a difficult economic climate whilst maintaining the quality of social care provision;

- sufficient and appropriate regard is given to individual circumstances and personal preference when determining the value of an individual's personal budget;
- people continue to have choice and control over their personalised care and support;
- that it is explicit that where people choose more expensive care and support options than their personal budget may allow, they will be required to meet the additional costs themselves.

## **Scope**

This policy applies to adults aged 18 and over who use social care services arranged by LCC and any other adults who may need such services in the future.

It is inclusive of all client groups including but not limited to older people, working age adults, adults with learning disabilities, physical disabilities, mental health needs and people with a visual or hearing impairment.

The policy also applies to the support that LCC provides to informal carers. An informal carer is someone that looks after a relative, friend or partner who is ill or disabled, without payment; this applies even if the person doesn't think of themselves as a carer.

LCC recognises the vital contribution that carers make to society and therefore carers are not currently charged for their eligible support needs. However, in order to make the best use of resources the cost effectiveness of the provision must still be considered.

This policy applies to all new service users and will be applied to existing service users at the time of their next review or assessment.

LCC will continue to provide care and support for people who have needs which meet the national eligibility framework, as set out in the Care and Support (Eligibility Criteria) Regulations 2014.

When it is clear to the assessor that the individual's needs are above the national eligibility threshold they will be offered help to find options to meet their assessed unmet eligible needs. The level of funding that they may receive will be determined by the completion of a financial assessment. Individuals who do not satisfy the eligibility criteria requirements will be signposted to locally available universal services. Where, following the assessment, it is determined by LCC that it is not required to meet the individual's needs, the individual will be provided with a written explanation for this determination.

## **Context**

LCC is facing an increasing level of demand for social care services, largely because of demographic change; at the same time there is less money available to meet this

increasing level of need. LCC therefore must think carefully about how to use the limited financial resources available so that people's eligible needs can be met.

LCC has a legal duty to undertake an assessment for any adult with an appearance of need for care and support, which is set out in Section 9 of the Care Act 2014<sup>1</sup>. The duty to meet an adult's eligible needs is set out subsequently in Section 18 of the Act.

The Care and Support Statutory Guidance<sup>2</sup> published in July 2016 enables the local authority to take into consideration its own finances and budgetary position when deciding how to meet needs.

### **Policy statement**

This policy aims to set out and formalise existing practice in line with the Council's duties under the Care Act 2014. The Care Act 2014 changed the way in which social care support is arranged and provided. The main focus of the Act is to promote wellbeing; the wellbeing principle underpins the whole of the Act and its associated regulations and guidance. However, the Act does not specify a set approach to determining wellbeing and as such LCC will consider each person's case on its own merits, based upon what the person wants to achieve and how LCC's actions will affect their wellbeing. LCC's starting assumption is that individuals are best-placed to determine the wellbeing outcomes they want for themselves, both within their own homes and as members of their local community.

One of the ways in which individual wellbeing is promoted by LCC is through the provision of services to meet eligible needs. The Care Act requires councils to allocate resources for the purpose of meeting the individual's unmet eligible needs, (a need that is eligible for social care but where the individual is currently not receiving support for that need), through the provision of a personal budget, and these resources must be allocated in a manner that is timely, transparent, and sufficient.

LCC will utilise an assessment, support planning and review model to determine in conjunction with the person any unmet needs. In determining how to meet individual needs, LCC will take into reasonable consideration its own finances and budgetary position and must comply with its related public law duties. This includes the importance of ensuring that the funding available to LCC is enough to meet the needs of the entire local population. LCC will consider how to balance that requirement with the duty to meet the eligible needs of an individual in determining how (but not whether) an individual's needs should be met.

LCC will take decisions on a case-by-case basis that weigh up the total cost of different potential options for meeting needs and include the cost as a relevant factor in deciding between suitable alternative options for meeting needs. This **does not** necessarily mean choosing the cheapest option; but the one that delivers the outcomes desired for the best value. This may mean that in some cases LCC sets a

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<sup>1</sup> <http://www.legislation.gov.uk/ukpga/2014/23/contents/enacted>

<sup>2</sup> <https://www.gov.uk/guidance/care-and-support-statutory-guidance/first-contact-and-identifying-needs>

personal budget which is lower than the cost of the option that a service user prefers. However, in each case, LCC will carefully consider the individual's circumstances and their views, wishes and feelings before reaching a decision.

LCC will not impose an arbitrary ceiling on the value of personal budgets i.e. there is not a limit on the financial cost of care, nor will personal budgets be reduced to meet a defined level of expenditure.

In determining the value of an individual's personal budget, LCC will consider the circumstances of the individual and have regard for their views, wishes, feelings, and beliefs. Individual preference and circumstances will not in themselves determine the personal budget value as LCC must balance its commitments and obligation to personalise care with the principle that financial constraints within public services are such that choice in funded care cannot be limitless.

The identification and management of risk within the context of adult social services requires a balanced approach between what is seen as acceptable and recognising that the concept of risk will vary from person to person. There may be occasions when LCC's usual positive approach to risk must be balanced with its duty to have proper arrangements in place to protect individuals who are potentially at risk of abuse or exploitation. Whilst individuals should as far as possible exercise their right to choose the support they need to achieve their desired outcomes, they must also understand the consequences of those choices and take responsibility for them.

## **Principles**

The Fair Outcomes policy has been created to establish how the limited resources available to the Department are to be targeted at providing care that meets statutory responsibilities, that is cost effective and provides good value for money.

Our fundamental principle is wellbeing. Wellbeing is about 'how we are doing' as individuals and communities. It includes life satisfaction, and a sense of meaning or purpose. More generally, well-being is just feeling well.

Leicestershire County Council operates a programme of services and opportunities for specific groups and communities who may be at risk and need higher levels of support both now and in the future. This focuses on supporting individuals and communities to improve their wellbeing, achieve their aspirations and become more resilient and in this way prevent and reduce the need to access other key services in the future.

These services may be time limited and the opportunities and services offered may change over time. They will also be linked to specific national or local strategies or agendas and will identify the outcomes they are expected to achieve.

Through promoting and enhancing wellbeing we bring communities together to share in cultural activities, connect through learning, understand local cultures and heritage, and inspire individuals and groups across the county to achieve their potential.

A fair outcome for the purposes of this document means that in each individual situation the right amount of support is provided without it costing more than it needs to and the support helps to achieve an appropriate outcome or goal.

When LCC supports people to think about their care and support there will always be 3 steps:

1. First LCC will ask **what the person can do for themselves**. It is important for everyone to be as independent as possible. The more people can do for themselves, the more control they have.
2. Then LCC will ask **what role their family, friends and the local community can play in supporting them**. This helps to make sure that people are part of the community.
3. Then, if needed, LCC will think about **paid support** and services. LCC wants to make sure paid support is used when it is really needed.

People will always be able to choose to have additional support or support from more expensive services than those identified by LCC. They can choose to pay for additional or more costly support if they wish, which is known as a 'top up'.

LCC will ask people utilising services to think about having their Personal Budget as a direct payment. This is because it gives them more choice and control over their care and support.

### **Information and advice**

Information and advice are fundamental to promoting wellbeing and enabling people to take control of and make well-informed decisions about their care and support and can also help to prevent and delay people's need for care and support. Information and advice will be available and offered to people in need of care and support irrespective of whether they have been assessed as having unmet eligible needs.

LCC will make available to all individuals information and advice on care and support and carers through a variety of channels and formats. This includes, but is not exclusive to, face to face, telephone, online and printed media.

### **Safeguarding**

Where LCC has reasonable cause to suspect that a person that has a need for care and support (regardless of whether or not LCC is meeting those needs) is experiencing, or is at risk of, abuse or neglect and as a result of those needs is unable to protect themselves against abuse or neglect or risk of it, LCC must make whatever enquiries it considers necessary to decide what further action, if any, should be taken.

Where the adult has care and support needs LCC will continue to carry out a needs assessment and determine whether they have eligible needs, and if so, how these will be met. The assessment for care and support will run parallel to the safeguarding

enquiry. The aim will be that the enquiry will not disrupt the assessment process or prevent LCC from meeting unmet eligible needs.

### **Advocacy and participation support**

LCC must always be confident that the individual is able, or is fully supported, to be involved as far as possible in the assessment process. LCC will make any reasonable adjustments to the assessment process required to enable an individual to be fully involved. An appropriate person or independent advocate will be engaged if the individual still has substantial difficulty in any of the following areas:

- Understanding relevant information
- Retaining information
- Using or weighing the information as part of engaging
- Communicating views, wishes and feelings

### **Assessing capacity**

It must be assumed that an individual has capacity unless it has been established that they lack capacity to make a particular decision. The practitioner will establish that the individual has the mental capacity to fully understand and be involved with the assessment by checking that they understand the questions being asked, are capable of providing answers, understand the implications on their personal circumstances of the overall process and have the capacity to express their wishes and feelings. This process will adhere to the Mental Capacity Act (MCA) 2005.

If following a mental capacity assessment, it is evident that the person lacks capacity then a best interests decision will be made on their behalf. This decision will also adhere to the Fair Outcomes policy principles.

### **Equalities**

LCC will always give due consideration to people's rights as set out in the Human Rights Act 1998, such as those set out in Article 8 which gives a right to respect for private and family life.

LCC ensures that working practices and policies comply with its duties as set out in the Equality Act 2010.

### **Exceptions to the policy**

LCC will always give reasonable consideration in circumstances where there is a compelling reason for a higher cost care package to be provided. For example, if there are cultural needs that require more specialist provision, or if a specially trained worker is required.



An exceptions process is in place, whereby senior managers will consider the circumstances of individual cases and provide advice and oversight regarding care packages.

### **Complaints**

People will be informed of their right to request a review of the decision that LCC makes about the amount of their Personal Budget. They can choose to submit further information that will be considered by the decision-maker.

They will also be informed of their right to complain using LCC's adult social care complaints procedure and that an advocate can be provided to support them with this.

People can also contact the Local Government Ombudsman for an independent review of their complaint if they are not satisfied with the Council's response to it.

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