Housing LIN

Connecting people, ideas and resources

Care and Support in Housing with Care for Older People

POLICY TECHNICAL BRIEF

A comprehensive review of policy changes affecting the commissioning and provision of care and support

October 2015 (updated in April 2016)

Housing Learning & Improvement Network

This new Policy Technical Brief forms part of a set of three documents providing information on care and support in Housing with Care for older people. The other two in the set are: an edited version of the 2010 Technical Brief *Care and Support in Extra Care Housing*; and the Case Study Report published in April 2015 *Approaches to the Procurement and Delivery of Care and Support in Housing with Care*.

The October 2015 version of this Policy Technical Brief has been updated in April 2016 to reflect the revised Care Act Guidance and CQC Guidance on registration of care in housing with care settings.

Disclaimer

Neither the author nor the Housing LIN accept any liability whatsoever for any loss, expense, liability, proceedings or claim arising from reliance placed upon any use, in part or in whole, of this publication. It is not a replacement for independent specialist advice, and those who use it should ensure that they take appropriate legal, financial and technical advice.

About the Author

Sue Garwood is an independent consultant specialising in areas where social care and housing-related issues come together for older people and those who live with dementia, in particular, Housing with Care. Author of a range of publications including the care and support aspects of the 2013 Housing LIN technical brief Funding Extra Care Housing, Sue has a background in social care and housing policy, service development and – in the case of social care – practice. She is the dementia and housing lead for the Housing Learning and Improvement Network.

CONTENTS

1	INTRODUCTION	1.	Introduction	2
		2.	Changing landscape	2
		3.	This document	3
2	WHAT DO WE MEAN BY HOUSING WITH CARE?	1.	What is it?	4
		2.	Typical services	4
		3.	Variations	5
		4.	Unique synergy	6
		5.	A housing model	6
		6.	Care and support in Housing with Care	7
3	THE CARE ACT 2014	1.	Introduction	8
		2.	General responsibilities of local authorities	8
		3.	New rules	9
		4.	Other relevant provisions	10
4	COMMISSIONING, PROCUREMENT AND FUNDING	1.	Care Act 2014	12
		2.	Health architecture	13
		3.	EU procurement rules	13
		4.	Supported accommodation changes	13
5	CHARGING	1.	Charging framework and principles	15
		2.	Wellbeing charges	15
		3.	Funding reforms	16
6	SAFEGUARDING	1.	Care Act 2014	18
		2.	Disclosure and barring	18
		3.	Care Quality Commission	19
		4.	Equality Act 2010	19
7	MENTAL CAPACITY AND HOUSING WITH CARE	1.	Introduction	20
		2.	Care Act 2014	20
		3.	Mental Capacity Act 2005	20
		4.	Deprivation of Liberty Supreme Court Judgement	21
		5.	Role of Care Quality Commission	22
8	CARE REGISTRATION	1.	Introduction	23
		2.	Care Act Guidance	23
		3.	New CQC approach to registration and inspection	23
		4.	New Regulations	23
		5.	Personal care or accommodation for persons who require nursing or personal care?	24
9	CONCLUSION			26
10	USEFUL RESOURCES			27

SECTION 1: INTRODUCTION

1. INTRODUCTION

1.1 A commonly accepted defining feature of Housing with Care (HWC), otherwise known as extra care housing, is the scheme-based availability of round-the-clock care and support. It is this which distinguishes it from domiciliary care available to those living in properties dispersed in the wider community. This is one of the features which is greatly valued by older people living in Housing with Care schemes, but also a feature which creates additional challenges for commissioners and providers.

1.2 There is growing diversity in the way in which the care and support are commissioned, managed, configured and delivered in England, and also where the risks lie. Despite the variety, there are also common features and key principles which are universally applicable. For example, although care is part of the overall service, HWC is fundamentally a housing provision. People live in their own homes and the care delivered is essentially domiciliary care not residential care (although these are no longer the labels used by the Care Quality Commission).

1.3 Housing with Care does not have its own unique classification and its own regulatory framework. It is a hybrid with a range of housing-related and social care legislation and regulation applying to it.

1.4 Within the increasingly complex social care and supported housing landscape, commissioners and providers need to navigate a complex array of rules, regulations, and revenue arrangements, some of which may not be complementary, in order to develop models which are compliant, but which are also cost effective and provide good outcomes for the people who live there.

2. CHANGING LANDSCAPE

2.1 The first Housing LIN Technical Brief "Care in Extra Care Housing" was written in 2005, when Housing with Care (more usually called extra care housing in those days) was an emerging model with a more limited number of players and a less sophisticated market. The procurement and provision of care in social sector schemes, while certainly not uniform, tended to be based on a model in which local authorities with responsibility for adult social care block contracted an on-site care team, present at the scheme around the clock, to deliver care packages to residents and respond to unplanned and emergency care needs. At its best, the model enabled a flexible, responsive – and indeed personalised – service to those who lived there.

2.2 In the period between 2005 and 2010 when the updated version was published, the Department of Health (DH) extra care housing grant programme (with Housing Corporation support) had provided capital funding to local authorities for new schemes with their provider partners which saw a significant increase in numbers. There were more mixed tenure schemes; personalisation in the guise of "Putting People First" had taken centre stage; the ring-fence had been removed from Supporting People budgets and care and housing-related support were more frequently procured together from a care provider; eligibility criteria for care were tightening; and various new legislative changes came into effect. These included the Mental Capacity Act 2005 as well as the creation of the Care Quality Commission and a new framework for registering and regulating "regulated activities" including personal care under the Health and Social Care Act 2008.

2.3 Since 2010 the landscape has changed significantly yet again, both in terms of circumstances and policy framework. The period between 2010 and 2015 has seen:

- A period of austerity and a massive decrease in public sector spending both in adult social care budgets, such as on home care and residential care, and in capital home building projects, as well as a decline in spending on Supporting People (housing-related support) services
- The DH's extra care capital programme being superseded by the Care and Support Specialised Housing Fund (2013-2018) administered by the Homes and Communities Agency and Greater London Authority
- Increasing commercial investment in the sector, predominantly for leasehold schemes
- Growing older population and increasing numbers of people with dementia
- Introduction of the "Affordable rent" regime
- Welfare reform
- Changes to the way supported housing is defined, and associated benefit regulations
- Changes to social housing and Housing Association properties currently being introduced in the Housing Bill 2015, the implications of which for Housing with Care are unclear
- The introduction of Health and Wellbeing Boards and Clinical Commissioning Groups (CCGs)

- New health commissioning and delivery architecture and the Better Care Fund
- NHS 5-year forward plan and a greater emphasis on integrated care
- Continued rolling out of personal budgets
- The Care Act 2014
- New rules in relation to disclosure and barring
- New CQC inspection regime and fundamental standards
- The Prime Minister's 2012 Dementia Challenge and The Prime Minister's Challenge on Dementia 2020
- The Supreme Court judgement on defining deprivation of liberty in March 2014
- Changes to EU procurement rules

3. THIS DOCUMENT

3.1 It is not within the scope of this document to detail all these changes. Its purpose is to outline key policy changes which are of particular relevance to care and support as they are commissioned, funded, regulated, configured and delivered in HWC settings. It replaces sections of the *Care and Support in Extra Care Housing (2010)* (2010 Technical Brief)[1] which has been edited accordingly. Together with the Case Study Report *Approaches to the procurement and delivery of care and support in Housing with Care*[2] published in April 2015, this Policy Technical Brief and remaining sections of the 2010 Technical Brief constitute a suite of guidance and information on care and support in HWC for older people.

3.2 It also supplements the following Housing LIN Technical Briefs and aims to minimise duplication:

1) *Funding Extra Care Housing (2013) (2013 Technical Brief)* [3]

2) *Mixed Tenure in Extra Care Housing (2014) (2014 Technical Brief)* [4]*, and*

3) *Key legal and regulatory areas applicable to land acquisition, development and operation of retirement communities (2015)* [5]

3.3 It must be noted that this document is not written by a lawyer and legal opinion may in any case differ in some areas. It is also the case that since the statutory guidance of the Care Act 2014 (CASS Guidance) has been written, the Department of Health has issued further clarification, and may well continue to do so. While great care has been taken to try and ensure the accuracy of the content, commissioners and providers are advised to get their own legal advice if they are unsure.

[1] www.housinglin.org.uk/pagefinder.cfm?cid=1647

[2] www.housinglin.org.uk/pagefinder.cfm?cid=9555

[3] www.housinglin.org.uk/pagefinder.cfm?cid=8865

[4] www.housinglin.org.uk/pagefinder.cfm?cid=1645

[5] www.housinglin.org.uk/pagefinder.cfm?cid=9501

SECTION 2: WHAT DO WE MEAN BY HOUSING WITH CARE?

1. WHAT IS IT?

1.1 The term Housing with Care (HWC) is used interchangeably with Extra Care Housing (ECH) to cover purpose-built or adapted buildings that are age and/or disability-friendly in design and decor and which generally comprise:

- Fully self-contained properties where occupants have their own front doors, and tenancies or leases which give them security of tenure and the right to control who enters their home
- A range of communal or shared facilities enabling group and community social activities
- A restaurant or dining room where at least one meal a day is available in many models
- Office suites for use by staff serving the scheme and sometimes the wider community
- A back up alarm service and other assistive technologies
- Safety and security often built into the design with fob or person-controlled entry, and "progressive privacy" which separates the private properties from the communal parts

1.2 As outlined in the Introduction, a commonly accepted key defining feature of HWC is the availability of care and support around the clock, usually provided by on-site care staff. This feature seems to be becoming less immutable.

1.3 Care and support within housing with care, whether commissioned by adult social care or self-funded, needs to be viewed within the context of the whole housing with care offer.

1.4 There is a complex interplay between the different charges in HWC – rents, service charges and care charges – and their sources. The Housing LIN Technical Brief, *Funding Extra Care Housing*[6] details this aspect of HWC.

2. TYPICAL SERVICES

2.1 Typical services in housing with care schemes include:

- Housing management
- Care and support on site 24/7 for both emergency, unplanned care responses, and planned provision
- Catering
- Cleaning and servicing of the communal areas
- Activities facilitation
- Repairs (depending on occupancy terms)
- Concierge service (sometimes)
- A range of other services available for individual purchase such as laundry, cleaning etc.

2.2 Use of the term "sheltered housing with round-the-clock care available on site" is becoming less useful as a shorthand description for HWC: sheltered housing with an on-site warden or scheme manager is becoming a thing of the past and the category is being superseded by different offers, terms and definitions. In addition, it fails to convey the synergy seen in effective HWC schemes.

2.3 Although CQC gives the care in HWC schemes its own category, the care provided in housing with care settings is essentially domiciliary care, but with a number of distinctive opportunities and features arising from the setting and its 24/7 presence. Ideally, the care in HWC settings should be characterised by the following:

- The ability to deliver care and support in a more flexible and responsive way, with, for example, more frequent short visits where appropriate. This would be facilitated by outcome-based care planning in which provider and tenant are free to agree together the best way to achieve specified outcomes
- Independence promoting – doing with rather than for
- An holistic approach which, together with other opportunities in HWC schemes, supports individual wellbeing and meets aspirations
- Effective teamwork amongst staff from the different services provided at the scheme
- Some of the care or support may not be delivered in the individual's own property but in another on-site facility, e.g. assisted bathroom or dining room

[6] www.housinglin.org.uk/Topics/browse/HousingExtraCare/FundingExtraCareHousing

3. VARIATIONS

3.1 In recent years, there has been an explosion of different approaches and innovations as those developing HWC try to meet the challenges posed by budgetary constraints and a legislative patch-work, while still making housing with care financially viable. It is probably true to say that no two schemes are identical in the way the care, support and other services have been configured, delivered and funded. Common features exist side-by-side with a host of variations including:

- **Strategic position** – Some local authorities (and CCG partners) see HWC as a cost-effective replacement for residential care and target those with high levels of need. In other areas, HWC forms part of a spectrum in which it is seen as a wellbeing 'offer' or a preventative and early intervention service as well as catering for those with high levels of need.
- **Sectors and providers** – We are seeing more HWC schemes being developed by the private sector, as well as different developers entering the market and many housing associations adding HWC to their portfolio, often to replace outdated sheltered housing.
- **Tenure** – We are seeing an increase in HWC for sale and more mixed tenure schemes which combine Affordable Rents or social rents, outright sale, shared ownership arrangements and the possible emergence of a private rented market.
- **Scale** – In general, new schemes appear to comprise a greater number of properties to achieve economies of scale but still range from 50 – 60 properties to large village developments with anywhere between 100 and 300 properties.
- **Range of development on site** – Some sites are simply occupied by the housing development, while others will combine a range of additional facilities designed and used for other purposes by residents and/or the wider community - as a community hub; resource centres; residential or nursing homes; day nurseries; and GP practices to name but a few.
- **New build or re-modelled** – New-build schemes allow designing from scratch although even with a blank page certain constraints will apply: location, size and footprint of the site; planning categories and terms. Some providers are re-modelling sheltered schemes where these lend themselves to this approach, and may no longer be viable as sheltered schemes.
- **Target groups** – These may be determined by local authorities and providers together in the social housing sector. Variations include independent older people, frail older people, people with physical disabilities or brain injuries, people with a learning disability, and/or those living with dementia.
- **Level of need profile and entry criteria** – Closely aligned to strategic position and target groups, and depending also on which sector and provider, these may range from older people making a lifestyle choice at one end of the spectrum, through those with some support or care needs, to those with substantial care needs at the other end of the spectrum.
- **Models of Extra Care housing** – This concept is used loosely to distinguish between, for example: retirement villages; more traditional smaller scale schemes; "Close Care" schemes where the care is delivered from an adjoining residential care home; integrated schemes which combine a range of need levels and target groups; schemes with separate wings for specific groups – typically for people with dementia, or less commonly, functional mental illness; specialist or dedicated schemes, often for people with dementia; and hybrids which combine different models, facilities and services on one site.
- **Service configuration and management models** – There may be one provider managing and delivering all the services, or several. Some services may be directly delivered by the main provider, others may be contracted out. The way in which services are clustered together and delivered varies: housing-related support if included at all could be combined with care provision or housing management and similarly with activities facilitation. The number of providers and how services are configured will contribute to the shape of the management and staffing structure but will not be the sole determinants.
- **Funding sources and resident charging arrangements** – These vary not only according to which local authority, sector and provider are involved, but also on the way particular provisions are defined and packaged for funding and charging purposes. One provider's housing-related support may be another's housing management or intensive housing management, and therefore count as eligible for Housing Benefit. The service charge may combine elements of housing management, concierge, housekeeping or 24/7 care or there could be a separate charge for any care and support elements.
- **Care provision** – This service differs in who provides it, who commissions it, how it is paid for, how it is configured, the actual service offer and staffing levels.

- **Role of assistive technology** – Devices may range from a basic back-up alarm service, and fob or remote-controlled door-opening, to individually selected and tailored add-ons or standalone digital devices that complement care and support services
- **Functions fulfilled** – HWC schemes are increasingly being developed as community hubs providing both resources for those living in the wider community to come in and use (e.g. social activities, gym or restaurant), and as a base from which to deliver services to the wider community, thereby spreading infrastructure costs (e.g. floating support or domiciliary care). They may offer day services, dementia cafés and other dementia-related services, respite care, intermediate care or step-up step down services, and a range of health or wellbeing services

4. UNIQUE SYNERGY

4.1 Although by no means an exhaustive list, it is important to recognise these and other variations because they interconnect with one another in a complex matrix, one feature exerting an influence on the shape or viability of others, for example:

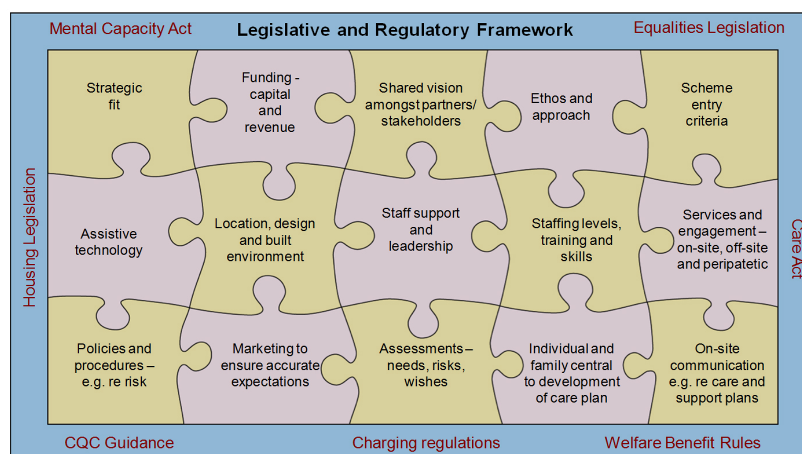
- the number of properties and/or locality on the financial viability of providing round-the clock care and support
- the implications of strategic positioning and target groups for staffing levels
- the extent of local authority funding on their entitlement to shape scheme eligibility and play a "gatekeeping" role
- how assistive technology, housing management, care and support shape and dovetail with one another
- the importance of location, scale and/or occupancy terms on the type of catering that may be feasible

4.2 It has always been the case that HWC, when it works well, is more than the sum of its parts. It is a unique synergy that offers many benefits. The most effective Housing with Care schemes are those which have ensured that all the different features of the scheme dovetail with one another to form a cohesive, coherent and synergistic whole. Problems arise when different features are out of kilter with one another, typically, for example, where a scheme's strategic position as a substitute for residential care, and targeting people with dementia, is combined with inadequate staffing levels, rigid care planning and/or an unsuitable service configuration.

4.3 The best HWC schemes are characterised by the following benefits:

- An ethos which promotes tolerance and mutual support
- An ethos which balances supporting and maximising independence with appropriate safeguarding, determined on an individual basis
- Care and support which is truly personalised and holistic responding to aspirations and social needs, not only basic care needs
- Good quality services which are well co-ordinated and are able to be flexible and responsive to changing individual and group needs
- Genuinely enhancing health and wellbeing, thereby fulfilling an early intervention and preventative function
- Supporting individual's choices to be private or take part in group activities, with opportunities for taking part in, and contributing to, community life
- Effective team- and partnership-working amongst staff both within schemes and with outside agencies

SCHEME SYNERGY



4.4 With funding getting tighter delivering this vision is becoming increasingly challenging and requires more imaginative and innovative responses, while fitting in to a changing funding, regulatory and legislative regime. If HWC is to be anything other than a sheltered scheme "with bells and whistles" at one end of the spectrum or an unregistered care home at the other, partners need to work effectively together both in planning and then operating the scheme to try and ensure that the services are configured and delivered so as to maximise the potential of the model. Working together with all stakeholders in an open and transparent way, recognising the legitimate drivers and agendas of each, and making sure all elements in the planning and operation dovetail as far as possible, is a good start.

5. A HOUSING MODEL

5.1 The focus of this Technical Brief is on the policy aspects relating to care and support in HWC for older people, but it must not be forgotten that the housing and care aspects are covered by different legislation and regulation. A fundamental feature of housing with care is that it is a housing model. Whilst on-site services may – and indeed should be – co-ordinated effectively, legally, the housing is a separate entity from the care – if it were otherwise, schemes would be liable to registration as care homes. Occupants have security of tenure and housing rights afforded by their occupancy agreements and cannot be required to move, unless in breach of the occupancy agreement. Thus, they could not normally be evicted because, for example, their partner has died and they do not themselves have care needs, nor for refusing planned care. At the same time, there may be limits to the support schemes are able to provide and it is advisable to be "up-front" about the fact that a home for life cannot be guaranteed.

6. CARE AND SUPPORT IN HOUSING WITH CARE

6.1 Some of the most significant changes to the care and support models are the result of the introduction of personal budgets as the unit of planned care delivery. It has led to a move away from large block contracts and towards a "core and add-on" approach to the procurement and delivery of care and support in housing with care. (For more information on this approach, see the 2010 *Care and Support in ECH*[7] Technical Brief, the 2013 *Funding ECH*[8] Technical Brief and the 2015 Case Study Report *Approaches to Procurement and Delivery of Care and Support in Housing with Care*[9]).

6.2 Among the positive impacts of a "core and add-on" approach appears to have been a reduced threat of HWC schemes being registered as care homes if the funding, management and delivery of housing and care services are closely integrated. In practice, it appears that as long as individuals are free to choose who provides their planned care and support using their own money or personal budgets, availability of care around the clock – the core 24/7 service – can be packaged together with housing services, funding and management. This potentially allows for greater infrastructure efficiencies and more seamless service provision, rather than having service silos. However, how such an arrangement would be seen in a court of law has not been tested (see section on Registration p 33).

6.3 Against the benefits of this approach are a number of disadvantages: the tensions between planned and unplanned care with an impact on flexibility and responsiveness (particularly concerning for people with dementia whose needs may not suit a service delivered in particular time slots); the challenges posed when there are a number of different providers delivering planned care on site; and a range of workforce issues. The pros and cons of different models are considered in greater depth in the 2010 Housing LIN Technical Brief[10], and particular issues posed by the "core and add-on" model of care procurement and delivery are explored in two discussion documents *Improved Personalisation in housing with care for older people?.*[11]

6.4 The three local authority approaches and 13 case studies in the Housing LIN Case Study Report *Care and Support in Housing with Care Procurement and Delivery Approaches*[12] give a flavour of some of the variations in approach.

6.5 In the next section, we take a closer look at the changes in the legislative and policy framework since 2010 that are specifically relevant to care and support in HWC for older people, beginning with arguably the most significant change: The Care Act 2014.

6.6 The Care Act is dealt with in its own right, followed by specific themes within which a range of changed legislation and regulation is considered, including Care Act provisions where relevant.

[7] www.housinglin.org.uk/pagefinder.cfm?cid=1647

[8] www.housinglin.org.uk/pagefinder.cfm?cid=8865

[9] www.housinglin.org.uk/pagefinder.cfm?cid=9555

[10] www.housinglin.org.uk/pagefinder.cfm?cid=1647

[11] www.housinglin.org.uk/pagefinder.cfm?cid=8830

[12] www.housinglin.org.uk/pagefinder.cfm?cid=9555

SECTION 3: THE CARE ACT 2014

1. INTRODUCTION

The Care Act 2014 (the Act) replaces a significant amount of social care legislation and regulation. It:

- Consolidates or modernises existing law
- Introduces new law based on the policy framework and direction of travel which has been evolving over the last decade or two
- Introduces some clauses which are new in law and practice.

The Act sets out a range of duties on local authorities with responsibility for adult social care and is accompanied by associated regulations and Care and Support Statutory (CASS) guidance. Local authorities are required to act under the guidance, which means that they must follow it, unless they can demonstrate legally sound reasons for not doing so.

Most of the Act came into force in April 2015. However, the major funding reforms including the care cap and care account were due to come into force in April 2016. At the time of writing, the government has announced that the cap on care costs element will be delayed until 2020.

***Note:* In the brief coverage of the Act in this document, an "s" before a number denotes the clause of the Act itself, an "R" before a number denotes the section in the relevant regulation, and a "G" refers to the Guidance.**

2. GENERAL RESPONSIBILITIES OF LOCAL AUTHORITIES

This document is not intended to provide an overview of the Act (many of these are already in existence and can also be accessed on the dedicated Housing LIN webpage[13]), but to highlight those aspects of particular relevance to housing with care for older people. The seven general responsibilities of local authorities (set out from s1 -7 in the Act) underpin all aspects of the Act and so are briefly outlined. These requirements have the potential to create opportunities for those developing and managing housing with care schemes to the benefit of those living in them and the wider community. A number of other key messages and changes are then listed highlighting those of particular relevance to HWC.

2.1 Wellbeing principle

The new statutory principle of individual wellbeing in s1 is the driving force of the Act. It makes it the responsibility of local authorities to promote wellbeing when carrying out any of their care and support functions. In this section of the Act, well-being is defined to include:

- personal dignity
- physical and mental health and emotional well-being
- protection from abuse and neglect
- control by the individual over day-to-day life (including how support is provided)
- participation in work, education or training
- social and economic well-being
- domestic, family and personal relationships,
- suitability of living accommodation
- the individual's contribution to society

Importantly, it is the first time that 'suitability of living accommodation' is recognised in a definition of "well-being". Furthermore, the Statutory Guidance emphasises in 1.18 that the concept of "independent living" is a core part of the wellbeing principle but that the concept has been broken down into "outcomes that truly matter to people", rather than using the relatively abstract term "independent living" (G1.19). HWC schemes can be an effective way of promoting the well-being of many individuals.

2.2 Preventing needs for care and support

s2 requires local authorities to provide or arrange services, facilities or resources, or take other steps in order to prevent or delay the development of needs for care or support amongst adults and their carers living in their area, or reduce these needs. This duty applies whether or not people have care and support needs, whether these are eligible or not (G2.3) and whether or not they will be responsible for funding their own support. In carrying out this responsibility, local authorities are required to identify what resources exist in their areas that could contribute to this goal.

Chapter 2 of the Statutory Guidance defines three levels of "prevention":

- Primary prevention/promoting well-being aimed at individuals who have no current particular health or care and support needs. This may include universal services, access to good quality information, recreational activities that reduce loneliness and isolation or support a healthy lifestyle, supporting safer neighbourhoods and building community resilience.
- Secondary prevention/early intervention targeted at individuals who have an increased risk of developing needs where the provision of services, facilities or resources may help to slow down deterioration or prevent the development of other needs

[13] www.housinglin.org.uk/pagefinder.cfm?cid=9366

- Tertiary prevention/intermediate care and re-ablement which is aimed at minimising the effect of disability or deterioration for people with complex health conditions and supporting people to regain skills where possible

Chapter 15 of the statutory guidance on “Working with Housing” makes it clear that housing-related services can fulfil a preventative function. Housing with care contributes to all three levels of prevention and has the potential to do more.

Emphasis on universal services and building community capacity offer the opportunity for HWC to be community hubs for in-reach and outreach.

2.3 Promoting integration

Under s3, local authorities are required to exercise their care and support functions with a view to ensuring the integration of care and support provision with health and health-related provision where it would promote the individual’s well-being, contribute to prevention, or improve the quality of the support. Importantly in the context of housing with care, “the provision of housing accommodation is a health-related service”, and this has been added to the National Health Service Act 2006. This requires both the NHS Commissioning Board and clinical commissioning groups to include accommodation when promoting integration.

This requirement has the potential of raising the profile of housing amongst health commissioners, and, together with other requirements of the Act, could help to make the case for health investment in housing-related solutions, including services and activities based in housing with care. The Housing LIN is already seeing examples of this emerge in some health and social care economies.

2.4 Providing information and advice

Under s4, a duty is placed on local authorities to establish and maintain accessible, good quality information and advice services relating to care and support for all people in its area. Such information and advice should include housing options including housing-related services and housing with care. The national sources of housing & related information from EAC FirstStop and Foundations (for home improvement agencies) are specifically mentioned (G 3.68). In addition, the Choice Directive (s30) has been extended to include HWC as one form of supported living (see 3.1 below); this provides added impetus to this duty.

2.5 Promoting diversity and quality in provision of services

Under s5, local authorities have a market shaping duty with a view to ensuring that a person wishing to access services to meet or prevent care or support needs can choose from a variety of high quality services and providers. These duties apply to self-funders as well as those for whom the authority funds services. Housing with care is an invaluable option for older people, and housing options are listed amongst the service types the authority should consider to meet the care and support needs of its whole population (G4.43).

2.6 Co-operating Generally

s6 places a duty on local authorities and their “relevant partners” to co-operate with one another in the exercise of their respective functions in relation to adults with care and support needs and their carers. “Relevant partners” are defined in s6 (7) and are essentially statutory bodies (e.g. lower tier councils, NHS bodies, police, probation etc) or Ministers of the Crown. Additionally, included in the Act’s list of people with whom the local authority may consider it appropriate to co-operate specifically are: people who provide services, resources or facilities to meet adults’ or carers’ need for support; and registered providers of social housing. This co-operation is for the purpose of promoting well-being; improving the quality of care and support and their outcomes; and safeguarding adults with needs for care and support at risk of abuse or neglect.

Together with market shaping responsibilities, this duty has implications for practice when changing procurement and delivery of care and support in existing HWC schemes, putting some onus on local authorities to consult with housing and care providers. Coupled with the emphasis on involvement of individuals, choice and control, local authorities also have added impetus not only to consult with HWC occupants but also co-produce service specifications.

This section of the Act provides an important lever for providers of housing with care in facilitating engagement with local authorities over service provision, community engagement and safeguarding issues.

2.7 Co-operating in specific cases

While co-operating across agencies in specific cases is fundamental to the provision of integrated services and promoting individual wellbeing, this particular clause of the Act (s7) is directed specifically at “relevant partners” and local authorities in other areas where relevant.

3. NEW RULES

The following Care Act provisions are directly relevant to HWC and are different from the rules that applied before.

3.1 Accommodation choice directive

Once the care plan has specified a type of accommodation to meet the individual’s needs, s30 of the Act and *The Care and Support and After-care (Choice of accommodation) regulations 2014* give adults the right to choose between options of that type. The preferred accommodation must be suitable and available, and the provider needs to be willing to accept the “local authority’s terms”. This choice has now been extended to include supported living for which a definition is provided at R8. It includes housing with care schemes.

The Act also makes it possible for the person to pay the difference between what the LA is willing to pay, and the full cost (s30 no:3). However, in the case of housing with care, this aspect is not relevant since the local authority does not cover the cost of the accommodation. Individuals can of course choose care that costs more than the personal budget allows for, but that is arguably irrelevant to the accommodation choice directive and they would be subject to a financial assessment anyway.

3.2 Ordinary residence

There has been a change in the rules governing which local authority pays for the care and support if a move to a HWC scheme outside the council's area forms part of a care and support plan. The *Care and Support (Ordinary Residence)(Specified Accommodation) Regulations 2014* specify that in supported living and shared lives, along with care homes, the principle applies that a person "placed" out of area is deemed to be ordinarily resident in the area of the first, or "placing" authority and does not acquire ordinary residence in the "host" or second authority (G19.27). This "deeming" principle still applies if the local authority is not itself arranging the accommodation, but is arranging the care and support out of the area (*DH Clarifications to statutory guidance under the Care Act 2014*). The "deeming" principle does not apply to cases where the person arranges their own accommodation and the local authority does not meet their needs (G19.30), nor when a person is living in a specified type of accommodation before they begin to receive care and support from the local authority.

4. OTHER RELEVANT PROVISIONS

Providers of Housing with Care should also note the following provisions of the Act:

4.1 Personalisation

Although that term is not generally used, personalisation is a theme which runs through the Act in various guises. The direction of travel is not new but the Act strengthens this requirement:

- Ensuring involvement of the individual, carers and others identified by the individual in assessments (s9 (5)), care and support planning (s25 (3)), reviews (s27 (2b) and safeguarding enquiries (G14.80).
- Needs assessments that are flexible, proportionate but also personalised and driven by the outcomes and aspirations of the individual (G6)
- Introduction of supported self-assessments (G6.44)
- Care and support planning which takes into account the individual's own strengths (G6.63), as well as their wider network and services, facilities and resources beyond health and social care
- The appointment of independent advocates where the individual would have substantial difficulty being fully involved in the above processes and has no-one else to support and represent the person's wishes (s67 & 68, G7.4)
- Clauses on personal budgets (s26) which were not previously defined in legislation, and availability of direct payments (s31-33) (to be dealt with in more detail in Section 4)

4.2 Carers

Carers are put on same footing as the person with needs (s10). HWC is often a good solution for both the adult with needs and the carer; it enables them to stay together rather than the cared for going into a care home, and can provide support to the carer in their caring role, as well as meeting their own needs.

4.3 Information and Advice

The local authority is required to consider providing information and advice or other preventative services if the person's needs are not eligible (G6.6)

4.4 Self-funders

Self-funders are entitled to a needs assessment (G6.13) and, if eligible, have the right to ask the local authority to arrange their care and support (s18 3b)(Implementation of the latter has been postponed to 2020)

4.5 National Eligibility Criteria

The Fair Access to Care (FACS) framework is replaced by *The Care and Support (Eligibility Criteria) Regulations 2014* introducing a national minimum eligibility threshold. This is based on identifying how a person's needs affect their ability to achieve defined outcomes and how this impacts on their wellbeing (G6.100). If there is an inability to achieve two or more of the specified outcomes and this means there is likely to be a significant impact on the adult's wellbeing, then they would be eligible for care and support arranged by the local authority.

Ideally, these new criteria should not impact on HWC either way since these apply to eligibility for care, not eligibility for HWC. They will, of course apply where eligibility for local authority-arranged care is agreed as the threshold for scheme entry. There are also concerns within the housing sector that local authorities will no longer exercise their discretion to meet the needs of those below that threshold. This could potentially have an impact on the balance of care needs in some HWC schemes, increasing the number where accommodation is only offered to those with higher levels of dependency.

4.6 Right to Delegate

Local authorities are given the right to delegate the majority of their care and support functions, including assessments (s79), but excluding the decision to charge and safeguarding duties. Delegation does not absolve the local authority of its legal responsibilities (G18.4)

4.7 Safeguarding

Safeguarding clauses (s42-47) and guidance replace 'No Secrets', the government's previous guidance on developing and implementing multi-agency policies and procedures to protect adults "at risk" from harm . The new arrangements give local authorities the lead in instigating safeguarding enquiries and setting up Safeguarding Adult Boards. Safeguarding is dealt with in greater depth below as one of the cross-cutting themes. Chapter 14 of the guidance which covers safeguarding mentions housing providers in various places.

4.8 Interrupted Provision

Local authorities are given the temporary duty to meet the needs of adults in their area whose service is interrupted due to provider failure (s48 – 52). This applies to self-funders and those funded by a different local authority. Local authorities also have the power to meet needs if the service is interrupted for any other reason, provided those needs are judged to be urgent by the authority.

4.9 Financial Sustainability of Registered Care Providers

The Care Quality Commission is given the duty to monitor the financial sustainability of large care and support providers that would be very difficult to replace (Market oversight clauses 53 -57). These have been defined in terms of volume of business.

4.10 Funding Reform

Funding reform in the shape of the funding cap for charging, the care account, and independent personal budgets is now due to be introduced from 2020 (s15 - 16, 28, 29) (to be dealt with in more detail in Section 5).

4.11 And finally...

Some of the provisions outlined above are covered in more detail below under specific themes that fall under a range of legislation and regulation.

SECTION 4: COMMISSIONING, PROCUREMENT AND FUNDING

There doesn't appear to be anything in the Care Act 2014 or other policy changes that fundamentally alters the direction of travel with regard to the commissioning and procurement of care and support in housing with care, although certain changes may pose both threats and opportunities for providers. The examples outlined in the Housing LIN case study report of April 2015, *Approaches to Procurement and Delivery of Care and Support in Housing with Care* are likely to reflect future arrangements even though they pre-date the Care Act.

1. CARE ACT 2014

1.1 Market shaping

The market shaping responsibility of the Care Act is relevant since the Act makes it clear that local authorities have responsibility for all older people in their area, not only those for whom they fund care, and also that the market shaping extends beyond traditional care and support services. The CASS Guidance outlines the importance of focusing on outcomes when commissioning services (G4.12 -4.20) and states that "outcomes should be considered both in terms of outcomes for individuals and outcomes for groups of people and populations."

It also states in G4.34 that "Local authorities should understand the business environment of the providers offering services in their area and seek to work with providers facing challenges and understand their risks", should "consider the impact of their own activities on the market as a whole, in particular the potential impact of their commissioning and re-commissioning decisions...." (G4.35), and also suggests a co-production approach with stakeholders (G4.51). This has relevance not only for the development of new HWC schemes, but importantly, when local authorities are wishing to change the basis upon which they procure the care and support services in existing schemes.

Market position statements or equivalent are advised as central to the process of shaping the market. TLAP's *Top Tips: Commissioning for Market Diversity* [14] provides some helpful guidance.

In addition, the Housing LIN has produced a useful resource pack to aid local authorities to develop accommodation based Market Position Statements and make free use of an online Strategic Housing for Older People Analysis Tool (SHOP@) that can help project their future housing and care needs for older people across all tenures and purpose-built dwelling types.[15]

1.2 Personal Budgets

The position of personal budgets is consolidated by their inclusion in law for the first time (s26), making them the norm for people with care and support needs. They are defined in the Guidance Glossary as: "A statement that sets out the cost to the local authority of meeting an adult's care needs. It includes the amount that the adult must pay towards that cost themselves (on the basis of their financial assessment), as well as any amount that the local authority must pay."

"There are three main ways in which a personal budget can be deployed:

- As a managed account held by the local authority with support provided in line with the person's wishes
- As a managed account held by a third party (often called an individual service fund or ISF) with support provided in line with the person's wishes
- As a direct payment" (G11.30)

s31 of the Act covers direct payments. The availability of direct payments should be included in the universal information service that all local authorities are required to provide. If a person then requests their personal budget in the form of a direct payment, this request should be met if certain conditions are met. The Guidance makes clear that "local authorities must not force people to take a direct payment against their will, or allow people to be placed in a situation where the direct payment is the only way to receive personalised care and support" (G12.9) "The person should have the maximum possible range of options for managing the personal budget, including how it is spent and how it is utilised. Directing spend is as important for those choosing the council-managed option or individual service fund as for direct payments" (G11.29)

The contractual relationships for managed personal budgets as compared to direct payments remain as outlined in Chapter 4 of the 2010 Housing LIN Technical Brief. The contractual arrangements for individual service funds have been clarified in a recent TLAP publication[16] as one form of managed personal budgets.

---

[14] TLAP *Top Tips: Commissioning for Market Diversity* (June 2015) www.thinklocalactpersonal.org.uk/Regions/london/resources/overview/?cid=10756

[15] SHOP@ www.housinglin.org.uk/SHOPAT

[16] TLAP Individual Service Funds and Contracting for flexible support (June 2015) www.thinklocalactpersonal.org.uk/News/PersonalisationNewsItem/?cid=10718

2. HEALTH ARCHITECTURE

2.1 Clinical Commissioning Groups and Health and Wellbeing Boards

The period between 2010 and 2015 has seen significant change in the architecture of health commissioning. The Health and Social Care Act (2012) replaced Primary Care Trusts with Clinical Commissioning Groups (CCGs), moved responsibility for public health to local authorities, and created Health and Wellbeing Boards (HWBs). These boards are required to produce health and wellbeing strategies for their areas taking into account the full range of health and social care needs in their area based on the Joint Strategic Needs Assessment. This should ideally include housing and housing-related needs for vulnerable groups.

In addition, at the time of writing, some CCGs have been selected as the "first wave" of 'Vanguard' sites to pioneer new models of care[17] and, in Greater Manchester, there is a shared commitment between all local authorities and health partners to develop a more integrated approach to health and social care to reduce pressure on NHS services.[18]

2.2 Better Care Fund

The Care Act 2014 amended the NHS Act 2006 to provide the legislative basis for the £5.3bn Better Care Fund, formerly the Integration Transformation Fund. It allows for the NHS Mandate to include specific requirements relating to the establishment and use of an integration fund. For 2015/16, NHS England (the body responsible for overseeing the budget, planning, delivery and day-to-day operation of the primary care commissioning side of the NHS in England) is required to ring-fence £3.46 billion within its overall allocation to CCGs to establish the Better Care Fund. This year (2015/2016), the fund also includes £354m set aside for capital purposes, as well as the £133.6 million Social Care Capital Grant and the £220 million Disabled Facilities Grant (DFG), both of which are paid directly from the Government to local authorities. The fundamental purpose of this fund is to improve integration of service provision. It could also be seen as a threat as it removes control of the DFG from lower tier authorities but, at the same time – and as evidenced by the Building Research Establishment[19] – it offers an opportunity to build effective partnerships with health and social care commissioners by demonstrating the value of housing-related services in supporting people in their own home and preventing hospital or care home admissions, thereby reducing demand on more costly services.

These changes, coupled with the Care Act's emphasis on integration, co-operation, prevention, and a diverse range of services to meet social and health care needs, could in the future mean that some funding for services in HWC could come from health sources.

3. EU PROCUREMENT RULES

We seem to be seeing a decline in local authorities block contracting large volumes of care and support in housing with care. Above a certain level, public contracts need to comply with EU procurement rules. These apply to local authorities and social landlords tendering out services. The rules have changed with the introduction of the Public Contracts Regulations 2015. There is a new light touch regime for social services type contracts. An OJEU notice and formal (but simplified) tender process will be required where their value is over €750,000.[20]

4. SUPPORTED ACCOMMODATION CHANGES

4.1 Specified Accommodation regulations

A significant change since the 2010 and 2013 Housing LIN Technical Briefs were written is the introduction of *The Housing Benefit and Universal Credit (Supported Accommodation) (Amendment) Regulations 2014*. These introduce new categories of what has been called "specified accommodation" and tie these in to state benefit entitlements. In all four categories, housing benefit rather than Universal Credit is used to cover housing costs, and in all four, the benefit cap is not applied to the housing costs.

Two of these are relevant to HWC for older people:

4.2 Category 1

Category 1 is Exempt Accommodation. It is defined as before: "accommodation which is provided by a non-metropolitan county council in England, a housing association, a registered charity or voluntary organisation where that body or person acting on its behalf also provides the claimant with care, support or supervision." These additional services need to be "more than minimal".

As before, such accommodation is protected from having housing benefit calculated on less than the full rent and service charge (minus ineligible elements), unless the rent level is considered unreasonable or the property too large. Also, of relevance to younger adults, this category is exempt from the social housing size criteria ("bedroom tax").

[17] www.england.nhs.uk/ourwork/futurenhs/5yfv-ch3/new-care-models

[18] www.manchester.gov.uk/news/article/7015/devo_manc_greater_manchester_and_govt_reach_trailblazing_agreement

[19] www.bre.co.uk/page.jsp?id=2369

[20] Crown Commercial Service: The Public Contracts Regulations 2015. Guidance on the new light touch regime for health, social, education and certain other service contracts

4.3 Category 2

The second category is supported housing where the care, support or supervision is not provided by, or on behalf of, the landlord.

This category applies to the same landlords as in Exempt accommodation but allows for the provision of care, supervision or support by someone other than the landlord. It recognises the reduction in block contracts with the introduction of personal budgets.

In this category too, the full cost of the rent and eligible service charge should be covered by Housing Benefit unless the rent is considered unreasonably high or the property is considered bigger than the claimant needs. There is a difference in the level of subsidy provided to local housing authorities by the Department of Works and Pensions to cover the cost of housing benefit, depending on whether the landlord is registered with the Homes and Communities Agency as a "Registered Provider" (previously registered social landlord), or is one of the other landlords included in the exempt accommodation definition.

In this category, the size criteria (bedroom tax) do apply for working age adults.

4.4 Turnbull Judgement

Prior to the introduction of category 2, the Turnbull judgement applied. If someone other than the landlord provided or procured the care, support or supervision, even if the amount was "more than minimal" there was a significant risk of housing benefit being capped to the local housing allowance level. Not uncommonly, the local authority would procure care and support together from a separate provider, leaving the housing provider out of the loop with the risk that the accommodation would not attract housing benefit to cover the full rent and service charge. This risk appears to have been resolved, or at least receded, with the introduction of the new category.

4.5 Individual Claimants

For both categories 1 and 2 of the specified accommodation, the rules in theory apply to individual benefit claimants and not necessarily to whole projects. In category 2, this is made explicit in the regulations: the claimant must have been "admitted in order to meet a need for care, support or supervision" and also "receives care, support or supervision." In exempt accommodation this is the way judges have interpreted the rules. In applying the rules in practice, however, housing benefit authorities may well assume that eligibility criteria are in place for HWC that are based upon a need for care or support where a local authority is involved in commissioning it and funding some of the care.

With tightening budgets it is not clear how individual housing benefit officers will apply or interpret the new rules. Nor is it known what further changes will be introduced to benefit rules or – if applied to HWC – the effect on the viability of HWC as a result of the government's decision to impose 1 per cent annual rent reductions in the social rented sector for four years from April 2016.[21]

[21] https://www.gov.uk/government/news/summer-budget-2015-key-announcements

SECTION 5: CHARGING

1. CHARGING FRAMEWORK AND PRINCIPLES

1.1 Replacement of HASSASSA

HASSASSA 1983, Fairer Charging Policies for Home Care and other non-residential Social Services (2013) and *LAC (2001) 32* have been replaced by the Care Act 2014 (s14-17), The Care and Support (Charging and Assessment of Resources) Regulations 2014 and statutory guidance chapter 8. These give local authorities the power to charge for meeting needs under sections 18-20 of the Act with a number of exceptions. Local authorities are not permitted to charge for community equipment (aids and minor adaptations) or the first six weeks of an intermediate care and re-ablement support service where these are provided under the provisions of the Care Act (i.e. as part of the care and support plan or as a preventative measure). "Where local authorities provide intermediate care or re-ablement to those who require it, this must be provided free of charge for a period of up to six weeks. This is for all adults, irrespective of whether they have eligible needs for ongoing care and support." (G2.61)

1.2 Charging Principles

The charging principles under the new regime remain much the same as before, the overarching one being that people should only be required to pay what they can afford. People will be entitled to financial support based on a means-test (financial assessment). Local authorities need to take into account a number of principles when making decisions about charging for care and support. They should, amongst others (G8.2):

- Be comprehensive, to reduce variation in the way people are assessed and charged
- Be clear and transparent so people know what they will be charged
- Promote wellbeing, social inclusion, and support the vision of personalisation, independence, choice and control
- Be person-focused, reflecting the variety of care and caring journeys and the variety of options available to meet their needs
- Not charge more than the cost of the service, which must exclude assessment costs, and also administration costs unless these are in relation to a person with capital above the capital limit who has asked the authority to arrange services to meet their needs (G8.15)

"Local authorities should consult people with care and support needs when deciding how to exercise this discretion. In doing this, local authorities should consider how to protect a person's income. The government considers that it is inconsistent with promoting independent living to assume, without further consideration, that all of a person's income above the minimum income guarantee is available to be taken in charges." (G8.46)

1.3 Charging for Preventive Services

Preventive services, facilities and resources can continue to be charged for (G2.55), but under *The Care and Support (Preventing Needs for Care and Support) Regulations 2014*, not under the *Charging and Assessment Regulations*; the latter applies only to care and support arranged under s18 – 20 of the Act. When charging for a preventive provision, local authorities should take reasonable steps to ensure that the charge is affordable but this does not need to follow the method of the financial assessment used for mainstream charging purposes (G2.58).

1.4 Light Touch Financial Assessments

The Guidance introduces "light touch" financial assessments. "In some circumstances, a local authority may choose to treat a person as if a financial assessment had been carried out. In order to do so, the local authority must be satisfied on the basis of evidence provided by the person that they can afford, and will be able to afford, any charges due."(G8.22) The local authority must remember that it is responsible for ensuring that people are not charged more than it is reasonable to pay, and must inform people that a light-touch assessment has taken place so that they can opt for a full assessment if they prefer.

2. WELLBEING CHARGES

2.1 Charging for availability of 24/7 care and support

In the context of HWC, there is one area where this is particularly relevant and which merits more detailed consideration: wellbeing charges (also called core charges, peace-of-mind charges and a variety of other names). These cover the cost of having care and support available on site around the clock, as well as a range of other services, and are a growing feature of housing with care as the examples in the Housing LIN Case Study Report[22] suggest.

While it is perfectly clear how planned care and support should be charged for, it may be less clear how local authorities should treat these charges which are typically a compulsory charge divided equally between all properties, whether as part of the accommodation-related service charge or kept separate. Further, these charges are often

[22] www.housinglin.org.uk/pagefinder.cfm?cid=9555

made by the provider rather than the local authority. (For more detail on wellbeing charges, see the Housing LIN's Funding Technical Brief and Case Study report).

2.2 Part of personal budget or a disability-related expense

Wellbeing charges could be included in an individual's personal budget or they could be treated as a disability-related expense (or less probably, a housing-related one), taken into account in the financial assessment. However they are classified, and whoever makes the charge, the principle is clear that the charges made by the local authority should not result in the person's income falling below the minimum income guarantee (MIG).

2.3 Financial Assessment Rules

"Because a person who receives care and support outside a care home will need to pay their daily living costs such as rent, food and utilities, the charging rules must ensure they have enough money to meet these costs. After charging, a person must be left with the minimum income guarantee (MIG), as set out in the Care and Support (Charging and Assessment of Resources) Regulation 2014. In addition, where a person receives benefits to meet their disability needs that do not meet the eligibility criteria for local authority care and support, the charging arrangements should ensure that they keep enough money to cover the cost of meeting these disability related costs." (G8.42)

Number 16 in Annex C of the guidance *Treatment of Income* stipulates that income from the Attendance Allowance (amongst other benefits) "must be fully taken into account when considering what a person can afford to pay towards their care from their income". *Annex C 39 and 40* go on to say "Where disability-related benefits are taken into account, the local authority should make an assessment and allow the person to keep enough benefit to pay for necessary disability related expenditure to meet any needs which are not being met by the local authority." In assessing disability-related expenditure, local authorities should include those in the list below. However, it should also be noted that this list is not intended to be exhaustive and any reasonable additional costs directly related to a person's disability should be included:

(a) Payment for any community alarm system.

(b) Costs of any privately arranged care services required, including respite care.

(c) Costs of any specialist items needed to meet the person's disability needs, for example:

iv. Day or night care which is not being arranged by the local authority;

x. Occasioned by age, medical condition or disability;

xi. Reasonable costs of basic garden maintenance, cleaning, or domestic help, if necessitated by the individual's disability and not met by social services"

***Note:** The above list is an extract of the list in the guidance*

2.4 Treatment of Attendance Allowance

A wellbeing charge is likely to cover some of these services and the guidance makes clear that this list is not exhaustive. Some providers who make a wellbeing charge work on the assumption that the Attendance Allowance (a benefit for severely disabled people aged 65 or over who need help with personal care) will be available to cover the cost of the charge. Thus, in the context of HWC, it is particularly important that local authorities do not assume the Attendance Allowance will be available to contribute to care and support charges without taking the wellbeing charge into account as a necessary expense too. Otherwise the Attendance Allowance will in effect be called upon twice. There may be a greater risk of this happening with a "light touch" financial assessment, and should be guarded against.

The same applies at present to people aged under 65 who have care needs and are in receipt of a Personal Independence Payment.

3. FUNDING REFORMS

3.1 Care Cap

As stated above, major funding reforms that were originally scheduled for April 2016 are now due to be introduced in April 2020. If implemented as planned, these will introduce a cap on the amount an individual must pay for services which meet eligible care needs (currently set at £72,000 for those over 65 years of age) and there will be changes in capital thresholds above which an individual has to draw on capital for some (between £17,000 and £27,000 in non-residential care settings) or all (above £27,000) of their care costs. For this to take effect local authorities will be required to keep care accounts which will keep track of progress towards the cap for all those who approach them with eligible needs. The amount in the accounts will be based upon the value of a person's personal budget or independent personal budget (in the case of self-funders), not the actual contribution towards the cost made by the individual. The particular relevance of this for those living in HWC is that if the wellbeing charge is included in the personal budget, the cap on care costs will be reached more quickly than if the charge is treated as a disability- or housing-related expense. From the individual's perspective therefore, it is an advantage to have the charge included in the personal budget.

3.2 Self-funders

It will clearly also be an advantage to self-funders to be assessed by the local authority so a care account can be established if they have eligible needs. Providers are advised to be mindful of this and suggest to self-funders with significant care needs that they seek an assessment from the local authority shortly before implementation – assuming it does in fact take place.

3.3 Shifting financial incentives?

The jury is out as to whether HWC will become more or less financially attractive to various stakeholders. For example local authorities may see the financial equation as more evenly balanced when hotel costs are no longer covered by them in residential care (although LAs will still cover this cost if the person can't afford it). But someone living in HWC would still not need to put the value of their property towards care costs.

For more information on the possible implications of these changes for housing with care, see Housing LIN Briefing paper on *Impact of changes to social care funding/charging post-Dilnot*.[23]

[23] www.housinglin.org.uk/pagefinder.cfm?cid=9012

SECTION 6: SAFEGUARDING

1. CARE ACT 2014

1.1 Statutory footing

Sections 42 to 47 of the Act put the safeguarding of adults at risk of abuse or neglect onto a statutory footing for the first time. These sections apply to adults who have needs for care and support (whether or not the authority is meeting any of those needs), are experiencing, or are at risk of abuse or neglect, and as a result of those needs are unable to protect themselves from either the risk of, or experience of abuse or neglect.

1.2 Statutory Guidance

Chapter 14 of the Care Act Guidance replaces No Secrets and has the same legal status, requiring compliance with it unless there are sound reasons not to. G14.6 states: "Local authority statutory adult safeguarding duties apply equally to those adults with care and support needs regardless of whether those needs are being met, regardless of whether the adult lacks mental capacity or not, and regardless of setting, other than prisons..." This is widely understood to mean that the national eligibility criteria for care services do not apply in safeguarding cases.

Six key principles underpin all adult safeguarding work: empowerment; prevention; proportionality; protection; partnership; and accountability. (G14.13)

1.3 Enquiries and Safeguarding Adults Boards

The local authority is required to "make (or cause to be made) whatever enquiries it thinks necessary to enable it to decide whether any action should be taken in the adult's case and if so, what and by whom (s42(2))" and establish a Safeguarding Adults Board (SAB) in its area. The SAB must arrange a Safeguarding Adult Review if there is concern about how people worked together to safeguard someone if it suspects that person died as a result of abuse or neglect, or is alive but has experienced serious abuse or neglect. SABs are also given the ability to require information to be provided by its partners.

1.4 Housing sector

Chapter 14 of the Guidance includes a number of requirements and recommendations which apply to the housing sector. It includes 14 references to housing providers and housing support providers. Providers need to have good reasons if they decide not to comply with those aspects of the Guidance relevant to them. For more information, see Housing and Safeguarding Adults Alliance website and in particular the self-assessment checklist against the Care Act statutory guidance for housing and housing support providers, and a presentation on the safeguarding aspects of the Act and Guidance as they relate to housing) at: www.housinglin.org.uk/Topics/browse/HousingOlderPeople/Safeguarding

1.5 Human Rights Act

S73 of the Care Act makes it explicit that care providers who are regulated by the Care Quality Commission are bound by the Human Rights Act when providing care and support to an individual which is arranged or funded in whole or in part by local authorities. This applies to those providing registered personal care in HWC schemes. This provision of the Act could make it advisable for self-funders to ask the authority to arrange their care and support on their behalf (G8.55), thus affording them an added layer of protection.

2. DISCLOSURE AND BARRING

2.1 Legislation

The 2010 Technical Brief outlined key aspects of the *Safeguarding Vulnerable Groups Act 2006 (SVGA)* which set up the Independent Safeguarding Authority (ISA). In 2012, the government scaled back the criminal records and barring system in the *Protection of Freedoms Act 2012*.

2.2 New Provisions

The following have been introduced:

- There is a new definition of 'regulated activity'. The focus is on the activities undertaken, not on particular settings. These include those who provide, manage or supervise health care, personal care, social work, assistance with cash/bills and/or shopping, assistance in the conduct of a person's own affairs and transporting adults to or from a place where they will be receiving health care, personal care or social care because of their age, illness or disability. It excludes activities carried out in the course of family relationships and personal, non-commercial relationships. It should also be noted that regulated activities under this provision are not co-terminous with the definitions of activities in the Health and Social Care Act 2008 regulated by the Care Quality Commission although there is some overlap.
- The category of "controlled activity" has been repealed. This category will have applied to some front-line housing and support staff so this is a significant change for those in HWC schemes not engaged in regulated activities.
- Staff are no longer required to be ISA-registered and continually monitored for any new criminal investigation
- The work of the CRB and ISA has been merged into the Disclosure and Barring Service (DBS)
- The Disclosure and Barring Service (DBS) update service has been introduced which lets applicants keep their DBS certificates up to date online so they can be re-used, and allows employers to check a certificate online.

2.3 Unchanged Provisions

The following provisions have not changed:

- The requirement to make appropriate referrals to the DBS. The *Safeguarding Vulnerable Groups Act 2006 (SVGA)* places a legal duty on employers and personnel suppliers to refer any person who has:
    - Harmed or poses a risk of harm to a child or vulnerable adult;
    - Satisfied the harm test; or
    - Received a caution or conviction for a relevant offence.
- Prohibition on knowingly allowing a barred person to work in a regulated activity

2.4 Criminal Records Checks

There are three levels of criminal record checks which employers can request depending on the role of the employee: standard, enhanced and enhanced with a specific check of the DBS barred list.

For more information on Disclosure and Barring see: https://www.gov.uk/government/organisations/disclosure-and-barring-service

3. CARE QUALITY COMMISSION

3.1 New Fundamental Standards

Established under the Health and Social Care Act 2008, the CQC has a wide range of responsibilities to ensure that the activities they regulate are safe and conform to fundamental standards. These are linked in to a raft of other laws and regulations. It is not appropriate to go into any detail here other than to point out that they do have an important role to play as regulator of personal care in housing with care schemes. New regulations *The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014* came into force last year which introduce new fundamental standards. An amendment to these followed in 2015 *The Health and Social Care Act 2008 (Regulated Activities)(Amendment) Regulations 2015*. Registration issues are dealt with later as a separate subject.

3.2 Mental Capacity Act

The Commission has a key role in ensuring that the service providers it regulates properly apply the Mental Capacity Act. This is covered in a little more detail in the next section on Mental Capacity.

4. EQUALITY ACT

4.1 Protected Characteristics

Since writing the 2010 Technical Brief, the Equality Act 2010 (the Act) has come into force. It consolidates and replaces the previous discrimination legislation for England, Scotland and Wales. The Act covers discrimination because of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. These categories are known in the Act as 'protected characteristics'. It applies to any person or organisation providing goods, facilities or services to the public.

4.2 Application

As well as consolidating existing law, the Act makes discrimination unlawful in circumstances not covered previously. Discrimination in most areas of activity is now unlawful subject to certain exceptions. Areas of activity that are covered include, for example, employment and other areas of work, education, housing, the provision of services, the exercise of public functions and membership of associations. Part 4 deals with discrimination in the sale, letting, management and occupation of premises, including housing.

As with other aspects of safeguarding, there is nothing in the Equality Act of particular relevance to Housing with Care as distinct from other forms of housing and care services, but it affords an additional layer of protection for occupants. Along with the Act is a statutory code of practice.

SECTION 7: MENTAL CAPACITY AND HOUSING WITH CARE

1. INTRODUCTION

The Mental Capacity Act 2005 was in force when the 2010 Technical Brief was written. Since then the House of Lords post-legislative scrutiny committee has highlighted that there is insufficient understanding and implementation of the Act, in particular its empowering features. Both the Care Act 2014 and new CQC regulations reinforce the importance of implementing the MCA. The Care Act includes a number of provisions specifically for people who lack the capacity to make relevant decisions for themselves.

In addition, the Cheshire West Supreme Court judgement in March 2014 on deprivation of liberty has made this more of an issue in HWC schemes at a time when local authorities appear increasingly to be viewing HWC as a suitable accommodation and care option for people with dementia.

2. CARE ACT 2014

2.1 Financial decisions

8.9 of the statutory guidance states: “Where possible, local authorities should work with someone who has the legal authority to make financial decisions on behalf of a person who lacks capacity. If there is no such person, then an approach to the Court of Protection is required.”

Further, in 8.19, people who lack capacity to consent to a financial assessment and who do not have anybody with legal authority to be involved in their affairs may require the appointment of a Property and Affairs Deputyship. Family members can apply for this to the Court of Protection or the local authority can apply if there is no family member involved in the care of the person.

2.2 Direct payments (DPs)

The 2009 Direct Payments DH Guidance has been superseded by s32 of the Care Act which makes it possible for people who lack capacity to request a direct payment themselves to have one if there is a suitable person to receive and manage it and certain conditions are met.

2.3 Independent Advocates

Sections 67 and 68 require a local authority to appoint an independent advocate to represent and support an individual if they would otherwise experience substantial difficulty understanding, retaining, and weighing up relevant information, and communicating their views and there is no-one else suitable to represent and support the individual’s best interests. These provisions apply to carrying out needs or carers assessments, preparing care and/or support plans, revising support plans (s67) and participating in safeguarding enquiries and reviews (s68).

3. MENTAL CAPACITY ACT 2005

The Mental Capacity Act (MCA) seeks to balance maximising the choice and control of individuals who have impaired mental capacity with protecting them from harm, based on that individual’s best interests.

3.1 Key Principles

- A presumption of Capacity – every adult has the right to make his or her own decisions and must be assumed to have capacity to do so unless it is proved otherwise
- Supporting individuals to make their own decisions – a person must be given all practicable help before anyone treats them as not being able to make their own decisions
- Unwise decisions – just because an individual makes what might be seen as an unwise decision, they should not be treated as lacking capacity to make that decision
- Best Interests – an act done or decision made under the Act for or on behalf of a person who lacks capacity must be done in their best interests
- Least restrictive option – anything done for or on behalf of a person who lacks capacity should be the least restrictive of their basic rights and freedoms

3.2 Test of capacity

A person who lacks capacity is “a person who lacks capacity to make a particular decision or take a particular action for themselves at the time the decision or action needs to be taken”. If there is reason to believe that a person has an impairment of, or a disturbance in the functioning of, their mind or brain, a two-stage test of capacity needs to be undertaken:

1) Functional test:
    1. Can the person understand relevant information about the decision to be made?
    2. Can the person retain the information for long enough to process it?
    3. Can the person use or weigh the information to arrive at a decision?
    4. Can s/he communicate it somehow?

2) Diagnostic test:

- If the answer to any of the above is no, is this because of an impairment or a disturbance in the functioning of the mind or brain? (doesn’t have to be permanent)
- If so, you no longer presume capacity.

- Their "decision" becomes a preference, and if, in acting upon it, the person comes to harm which could have been anticipated, those with a duty to care could be deemed negligent.

This test needs to be undertaken if there are doubts about a person's mental capacity to sign a tenancy agreement or lease[24], and even if a housing professional asks an external professional expert to assess the individual's capacity to sign the agreement, it will be the housing provider's decision whether or not the person has the necessary mental capacity to sign the agreement, not the professional who is there to advise.

A person who lacks mental capacity to do so, should not be asked to sign it. If the scheme has the capacity to support the individual's wellbeing, and a move to a HWC scheme has been assessed as being in the individual's best interests, a Property and Affairs LPA, Enduring Power of Attorney or court appointed deputy can sign a tenancy agreement on a person's behalf. A tenancy agreement can be left unsigned if a landlord agrees, but it is not clear what view the CQC takes on this when assessing whether a provision should be registered as personal care or as a care home.

For more information and resources on Housing and the Mental Capacity Act, visit the Housing LIN Mental Capacity Act webpage at www.housinglin.org.uk/Topics/browse/HousingandDementia/Legislation/MCA/

4. DEPRIVATION OF LIBERTY SUPREME COURT JUDGEMENT

4.1 European Convention on Human Rights

Under section 5 of the European Convention on Human Rights (ECHR), it is against the law for the state to deprive a person of their liberty for the purpose of care or treatment if they lack the capacity to agree, without fulfilling certain conditions. The deprivation must be:

- Necessary
- In the person's best interests
- Proportionate to the level of harm being prevented
- The least restrictive option possible

Section 5 of the Mental Capacity Act 2005 allows people to do certain things related to the care, wellbeing or treatment of someone without his or her capacitated consent, and be immune from prosecution if the above conditions apply. This does not, however, extend to deprivation of liberty without proper authorisation which, in the case of people living in housing settings, is currently through an application to the Court of Protection.

4.2 Deprivation of liberty "Acid Test"

The Supreme Court Judgement in March 2014 set out what is known as the "acid test" for deprivation of liberty:

Does person have capacity to consent to arrangements? If not:

- Is person subject to continuous supervision and control? (Does not have to be in line of sight) AND
- Is the person free to leave (even if s/he shows no wish to do so)? AND
- Is the confinement the responsibility of the state?

The relative normality of the arrangements and the person's compliance or lack of objection are irrelevant. The acid test is open to interpretation and requires further case law to clarify areas of uncertainty.

4.3 Some Implications for Housing with Care

- The current threshold for deprivation of liberty is lower than it used to be and there are likely to be people living in housing with care schemes to whom it applies
- Both housing and care providers:
  - need to work with others to minimise restrictions in the person' best interests
  - have responsibilities under the MCA[25] and Care Act safeguarding provisions[26], so need to be aware and raise any concerns with the local authority

4.4 Law Commission Review

A review of the mechanisms for authorising a deprivation of liberty is being undertaken by the Law Commission and new draft legislation replacing current arrangements is anticipated at the end of 2016.

For more information on the implications of the Supreme Court Judgement for supported living settings, see various resources on the Housing LIN deprivation of liberty webpage www.housinglin.org.uk/Topics/browse/HousingandDementia/Legislation/DoL

[24] See Housing LIN template for assessing capacity to hold and sign a tenancy agreement www.housinglin.org.uk/pagefinder.cfm?cid=9610

[25] www.housinglin.org.uk/Topics/browse/HousingandDementia/Legislation/MCA

[26] www.housinglin.org.uk/pagefinder.cfm?cid=8914

5. ROLE OF CARE QUALITY COMMISSION (CQC)

5.1 Inclusion of capacity issues in Fundamental Standards

The Health and Social Care Act 2008 (Regulated Activities) regulations 2014 which introduces the new "Fundamental Standards" makes several references to people who may lack mental capacity in relation to the particular standard. The regulations specify that the provider must act in accordance with the Mental Capacity Act. Standard 13 (5) in relation to safeguarding states: "A service user must not be deprived of their liberty for the purpose of receiving care or treatment without lawful authority".

5.2 Monitoring care providers' application of the MCA

The Care Quality Commission (CQC) has the responsibility for monitoring registered providers' appropriate application of the Mental Capacity Act and deprivation of liberty safeguards. In the case of HWC schemes, this applies to the registered care provider(s).

The March 2015 CQC *Provider Handbook* makes it clear that during inspections, the CQC will "assess how well providers are using the MCA to promote and protect the rights of people using their services" and will "look in particular at how and when capacity is assessed, how mental capacity is maximised, and, where people lack mental capacity for a particular decision, how that decision is made and recorded in compliance with the MCA." They will also look at the proportionality of any restraint used.

5.3 Potential registration issues

The Care Quality Commission is likely to look particularly closely at supported housing settings where some or all occupants have impaired cognition, including scrutinising the validity of the occupancy agreement, in order to assure itself that the arrangement does not constitute "accommodation for persons who require nursing or personal care".

SECTION 8: CARE REGISTRATION

1. INTRODUCTION

1.1 Personal care and regulated activity

In the context of a patchwork of housing and care legislation and regulation which does not always dovetail neatly, a key challenge for providers of housing with care has always been to ensure that they are not categorised by the regulator as a care home. This is defined in the *Health and Social Care Act 2008* as "accommodation for persons who require nursing or personal care." This is distinct from care provided in people's own homes which is called "personal care". Both are activities regulated by the Care Quality Commission.

1.2 Definition of personal care

Personal care is defined as "physical assistance given to a person in connection with—

i) eating or drinking (including the administration of parenteral nutrition),

ii) toileting (including in relation to the process of menstruation),

iii) washing or bathing,

iv) dressing,

v) oral care, or

vi) the care of skin, hair and nails (with the exception of nail care provided by a chiropodist or podiatrist); or the prompting, together with supervision, of a person, in relation to the performance of any of the activities listed [above], where that person is unable to make a decision for themselves in relation to performing such an activity without such prompting and supervision."

2. CARE ACT GUIDANCE

The Care Act statutory guidance includes a whole section on "Working with housing authorities and providers" (G15.48 – 15.68) While suitability of accommodation is a core part of wellbeing, and housing services are defined as health-related services, G15.51 clarifies: "Where housing forms part of the solution to meeting a person's needs for care and support, or preventing needs for care and support, then a local authority may include this in the care or support plan even though the housing element itself is provided under housing legislation"(writer's underlining). This point is important since accommodation and personal care provided together would be registrable by CQC as a care home.

3. NEW CQC APPROACH TO REGISTRATION AND INSPECTION

3.1 New approach

In October 2014, the CQC changed the way in which it carries out its duties. The new approach involves:

- Registration
- Intelligent monitoring using data, evidence, information and feedback from people
- Expert inspections
- Using all the information gathered to make a judgement on ratings which providers then need to display: Outstanding, good, requires improvement, inadequate
- Publishing ratings

3.2 Five key questions

The CQC asks five key questions about the services it regulates:

- Are they safe?
- Are they effective?
- Are they caring?
- Are they responsive to people's needs?
- Are they well-led?

3.3 Provider Handbook

The CQC has published a provider handbook, *How CQC regulates: Community adult social care services, March 2015* and a set of Appendices which provide more detailed information on key lines of enquiry, characteristics of each rating level and rating principles. (www.cqc.org.uk/content/provider-handbooks)

4. NEW REGULATIONS

4.1 New Fundamental Standards

Since writing the 2010 Housing LIN Technical Brief, *The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014* as amended by *The Health and Social Care Act 2008 (Regulated Activities)(Amendment) Regulations 2015* have introduced a new set of Fundamental Standards.

These include: person centred care; dignity and respect; consent; safe care and treatment; safeguarding service users from abuse and improper treatment; meeting nutritional and hydration needs; premises and equipment (see below); complaints; governance; staffing; fit and proper persons; and duty of candour.

4.2 Defining "premises"

Of particular relevance in the context of housing with care, the definition of premises in the new Regulations states "but in regulations 12, 14 and 15, [the term premises] does not include the service user's accommodation where such accommodation is not provided as part of the service user's care or treatment". These three standards relate to safe care and treatment

(12), food and drink (care provider only responsible if part of care plan) (14), and premises and equipment (15). Thus it seems clear that the care provider is not responsible for activities in relation to the person's accommodation (unless specified in the care and support plan, e.g. cleaning).

As the CQC only regulates personal care, and people's own homes are excluded as "premises" for the purposes of regulation, the CQC has no remit to regulate a service user's own home but may raise concerns.

4.3 Equipment

If "accommodation is not provided as part of the service user's care or treatment and such equipment is not supplied by the service provider", clause 15(3) clarifies that the care provider is not responsible for the security, suitability, maintenance and location of equipment, though they are not exempt from using it properly, keeping it clean and raising any safety concerns.

5. PERSONAL CARE OR ACCOMMODATION FOR PERSONS WHO REQUIRE NURSING OR PERSONAL CARE?

5.1 Introduction

It is of fundamental importance that the care delivered in HWC is categorised as "personal care". If a scheme were to be registered as a care home there would be some undesirable consequences:

- Occupants would no longer be living in their own homes with associated rights, choice and control
- Their homes, and the scheme as a whole, would be subject to inspection by the Care Quality Commission
- The revenue funding streams (e.g. housing benefit) would no longer be available
- HCA could require reimbursement of capital subsidies

There have not been fundamental changes to the way in which the Commission seeks to distinguish between care homes and various supported housing models, although they have been working on updated guidance for providers. They still categorise domiciliary care, extra care housing, shared lives and supported living as separate categories within "community adult services" and make it clear that these are most likely to be regulated as "personal care".

What has changed since 2010, is the introduction of the second category of specified accommodation. In theory, this means that there is greater freedom to separate the care, support or supervision from the housing provision without falling foul of the Turnbull Judgement, making it easier to avoid registration as a care home. However, such separation does not necessarily deliver better outcomes. (See Chapter 5 of the 2010 Technical Brief[27] on the advantages and disadvantages of separate or integrated housing and care management)

5.2 Minimising the risk of registration as a care home

Regulators tread a fine line between the current law, the wording of the regulated activity categories and possible interpretation in a court of law on the one hand, and on the other, the direction of travel favoured by government departments, local authorities, disability groups and housing providers; that is supported housing rather than care home models for people with significant care and support needs, including cognitive impairments. In addition, they somehow need to distinguish between service delivery models with some integrated features that yield better outcomes for occupants but can still be viewed as essentially housing, and other arrangements which appear simply to function as unregulated care homes.

The Care Quality Commission has been consulting on draft guidance for providers of Housing with Care. The final version entitled *Housing with Care: Guidance on Regulated Activities for Providers of Supported Living and Extra Care Housing* was published in October 2015. www.cqc.org.uk/content/regulated-activities
In order to minimise the risk of being classified as "accommodation for persons who require nursing or personal care", those developing HWC schemes are advised to read the new Guidance.

There are three areas that pose particular challenges:

Mental Capacity and Occupancy Agreements

It is clear that someone with a Lasting Power of Attorney (Property and Affairs), Enduring Power of Attorney or court appointed deputy has the legal authority to sign an agreement on behalf of a person. It is also clear that an occupancy agreement is not likely to be seen as valid by the CQC if it is signed by someone who lacks the capacity to understand the basics, or by someone else on their behalf who does not have legal authority. It is less clear what CQC's position is with regard to unsigned tenancy agreements. This position is not in itself unlawful and some learning disability groups advocate this route, along with best interests decision-making. There are different views as to the advisability of such an approach.

Degree of separation needed between care and accommodation provision

The degree of inter-dependence between the accommodation and care provider is an important consideration. The question over whether it is necessary for the accommodation and care to be delivered by separate providers, or separate arms of an organisation with separate management, in order to demonstrate that the two functions are not inter-dependent, remain

[27] www.housinglin.org.uk/pagefinder.cfm?cid=1647

thorny issues. Key point 8 of the Guidance states: “The difference will depend on the contractual arrangements in place for the delivery of the care and of the housing. Generally speaking, where there are separate legal arrangements for the accommodation and for the personal care, we register and regulate only the personal care provider.” “On the ground”, schemes exist where a single provider provides and manages both elements of the service, although there is likely to be a management separation below scheme manager level. The care provision in these schemes is registered with the Commission as personal care, not residential care.

Core and Add-on model

Some providers include as a condition of occupancy a charge for the availability of care around the clock (the core) as distinct from the day-to-day personal care (planned care or add-on). The CQC Guidance clarifies the position regarding this as follows:

- Charges for the mandatory service and what it covers should be clearly set out, including details of any personal care that can be provided as part of it. The tenant or owner should have free choice over who provides normal day to day personal care in their own home. Core service providers sometimes offer a full normal day to day personal care service as well; this is perfectly acceptable as long as people can choose another provider [for the planned care*] if they want to (and one is available).”
  **Editor’s addition for clarification*

So, where mandatory core services are in place, the provision should still be registered as ‘personal care’.

5.3 Key principles

A range of factors should be taken together as indicative of the whole picture rather than any one being taken as conclusive in its own right. The following principles are clear.

- People need to live in their own home
  - They should have exclusive possession of at least part of their accommodation
  - This should be set out in a lawful occupancy agreement (see caveat above)
  - They should be able to control who enters their property
  - They should have unrestricted access to every part of their home apart from any co-tenants’ private space
  - The landlord or support staff should not have free access to the person’s home without authorisation or unless they give reasonable notice
- There should be separate contracts covering the accommodation and care with a clear legal separation between the care and accommodation
  - Living at the scheme should not be conditional on receiving care from a particular provider
  - Occupants should be able to choose who provides their care and to stop having care without it affecting their right to reside there
  - Where state subsidised, the care and accommodation funding would be expected to come from different sources, i.e. housing benefit for accommodation and the local authority for care
  - Decisions such as agreeing a new occupancy agreement, rent rises or giving notice to quit the accommodation are made by the housing provider

There may also be some good practice pointers, although their legal relevance is unclear:

- Allocation procedures not mimicking residential placement procedures
- The proper involvement and powers of the housing provider and /or housing authority in allocation of properties
- Charging polices following the non-residential care charging guidance
- Maximising choice; minimising what is made a condition of tenancy or lease
- Guarding against a dependence culture and an institutional feel
- Providing care and support in such a way as to maximise independence and wellbeing

Lastly, at the time of writing, the Housing LIN has been invited to be a member of the CQC’s Housing with Care Advisory Group. The Group will support CQC to develop and improve how they inspect care in Housing with Care services, discuss the data needed to support a pilot project, and comment or advise various other aspects.

***Note:* Legal advice should be sought when setting up new schemes, and commissioners and providers are advised to read the full CQC Guidance and keep a look out for any subsequent case law.**

CONCLUSION

Of all the policy developments described in this Technical Brief, the Care Act 2014 is arguably the most significant for care and support in HWC. As laid out, the Act appears to be a positive and progressive piece of legislation with the potential to transform the lives of those who have – or are at risk of having – care and support needs. Much, however, depends on its effective implementation. It is generally accepted that another potentially empowering piece of legislation, the Mental Capacity Act 2005 is still not widely understood and implemented. Another key area for local authorities and housing providers alike is deprivation of liberty.

The impact of all these policy changes and their interaction with other factors such as demographic changes and budget cuts has yet to be seen. Additions and amendments to policy are emerging all the time: the social care funding reforms; welfare benefit changes; government policy in relation to housing associations; and deprivation of liberty arrangements. There are likely to be many more not yet known about.

Will individual wellbeing drive decisions about moves to HWC and will a commitment to greater voice, choice and control characterise how care and support services are procured, configured and delivered in housing with care schemes – both at an individual and community level? What impact will deprivation of liberty arrangements have now and in the future on how local authorities use housing with care? Will the provisions of the Care Act improve joint working in housing with care at all stages of its development and operation? Will local authorities use HWC as part of an early intervention and prevention strategy, or will they seek to increasingly target HWC that they have been involved in commissioning at those who meet the new national eligibility criteria for social care? Will the Care Act help to embed housing with care as part of integrated health, social care and housing solutions?

It is a time of considerable uncertainty for all housing with care stakeholders, but the provisions of the Care Act 2014 and Mental Capacity Act 2005 are likely to remain fundamentally the same for years to come. This policy technical brief has briefly outlined key provisions relevant to housing with care. By promoting an understanding of the duties, responsibilities and powers of local authorities and others, the Technical Brief aims to empower stakeholders to hold one another to account.

The accompanying case study report *Approaches to Procurement and Delivery of Care and Support in Housing with Care* provides a snapshot in time of how providers and commissioners are procuring and delivering care in practice which, in tandem with this Policy technical brief, the 2010 Technical Brief and many other useful Housing LIN resources complement one another to help those developing and managing housing with care in these challenging times.

USEFUL RESOURCES

INFORMATION ON HOUSING WITH CARE GENERALLY

Housing LIN website
www.housinglin.org.uk

HOUSING LIN SUITE OF CARE AND SUPPORT TECHNICAL BRIEF DOCUMENTS IN ADDITION TO THIS ONE

Case Study Report: Approaches to Procurement and Delivery of Care and Support in Housing with Care (April 2015)
www.housinglin.org.uk/pagefinder.cfm?cid=9555

Technical Brief: Care and Support in Extra Care (2010)
www.housinglin.org.uk/pagefinder.cfm?cid=1647

CARE ACT RESOURCES

Care Act 2014
www.legislation.gov.uk/ukpga/2014/23/contents/enacted

Care and Support Statutory Guidance
https://www.gov.uk/government/publications/care-act-2014-statutory-guidance-for-implementation

Foundations Briefing – Care Act 2014 and its statutory guidance
www.foundations.uk.com/resources/publications/briefings

Sue Adams and Gill Green: Making the case for impartial information and advice about housing and care for older people (2015)
http://careandrepair-england.org.uk/?page_id=151

TLAP: Top Tips – Commissioning for Market Diversity (June 2015)
www.thinklocalactpersonal.org.uk/Regions/london/resources/overview/?cid=10756

TLAP: Individual Service Funds and Contracting for flexible support (June 2015)
www.thinklocalactpersonal.org.uk/News/PersonalisationNewsItem/?cid=10718

COMMISSIONING, PROCUREMENT AND FUNDING

Housing LIN Technical Brief: Funding Extra Care Housing Technical Brief (2013)
www.housinglin.org.uk/FundingExtraCareHousing

Housing LIN Strategic Housing for Older People tools (SHOP)
www.housinglin.org.uk/SHOP

Housing LIN briefing paper: Market Position Statements and the accommodation needs of older people. IPC (Dec 2012)
www.housinglin.org.uk/Topics/browse/HousingExtraCare/ExtraCareStrategy/SHOP/SHOPv2/SHOPBriefingPaper

Housing LIN briefing paper: Impact of changes to social care funding/charging on extra care housing post-Dilnot (2013)
www.housinglin.org.uk/pagefinder.cfm?cid=9012

Crown Commercial Service: The Public Contracts Regulations 2015. Guidance on the new light touch regime for health, social, education and certain other service contracts

TLAP: Individual Service Funds and Contracting for flexible support (June 2015)
www.thinklocalactpersonal.org.uk/News/PersonalisationNewsItem/?cid=10718

SAFEGUARDING

Housing and Safeguarding Adults Alliance website
www.housinglin.org.uk/pagefinder.cfm?cid=8914

SCIE Safeguarding Resources including Adult Safeguarding Practice Questions
www.scie.org.uk/adults/safeguarding

SCIE Guidance 53: Adult safeguarding and Housing
www.scie.org.uk/publications/guides/guide53/frontline-housing

Care Act CASS Guidance Ch 14
https://www.gov.uk/government/publications/care-act-2014-statutory-guidance-for-implementation

Disclosure and barring
https://www.gov.uk/government/organisations/disclosure-and-barring-service

MENTAL CAPACITY AND HOUSING WITH CARE

Housing LIN MCA and Deprivation of liberty resources
www.housinglin.org.uk/Topics/browse/HousingandDementia/Legislation

SCIE Mental Capacity Act resources
www.scie.org.uk/publications/mca

CARE REGISTRATION

Care Quality Commission Guidance for providers
www.cqc.org.uk/content/guidance-providers

© Housing Learning & Improvement Network

£15.00

About the Housing LIN

The Housing LIN is the leading 'learning lab' for a growing network of housing, health and social care professionals in England and Wales involved in planning, commissioning, designing, funding, building and managing housing, care and support services for older people and vulnerable adults with long term conditions.

Previously responsible for managing the Department of Health's Extra Care Housing Fund, the Housing LIN is called upon by a wide range of statutory and other organisations to provide expert advice and support regarding the implementation of policy and good practice in the field of housing, care and support services.

For further information on this and about the Housing LIN's comprehensive list of online resources on funding care and support in specialist housing for older people, visit: www.housinglin.org.uk

Housing Learning and Improvement Network

c/o EAC, 3rd Floor, 89 Albert Embankment, London SE1 7TP
tel: 020 7820 8077
email: info@housinglin.org.uk
web: www. housinglin.org.uk
twitter: @HousingLIN

© Published by the Housing Learning and Improvement Network, 2015