

Consultation on draft regulations and guidance for implementation of part 1 of the Care Act in 2015/16

Response from the Making Every Adult Matter coalition

Introduction

Thank you for the opportunity to respond to this consultation.

Making Every Adult Matter (MEAM) is a coalition of four national charities – Clinks, DrugScope, Homeless Link and Mind – formed to influence policy and services for adults facing multiple needs and exclusions.¹ Together the charities represent over 1600 frontline organisations working in the criminal justice, drug and drug treatment, homelessness and mental health sectors.

Within this MEAM response we have focused on those questions which we felt were most pressing for people suffering from multiple needs and exclusions.² In addition, Clinks, Homeless Link and Mind have also submitted detailed responses and we fully endorse these documents.

MEAM welcomes many of the strategic initiatives set out by the Department of Health in the draft guidance and regulations. We are particularly pleased to note the emphasis on appropriate assessments and effective partnership working between different local authority departments and their external partners. These two themes will provide the main focus for our response to the consultation.

However, despite the inclusion of these positive strategic commitments, we remain concerned by some of the explanatory elements of the guidance. Unless they are clarified, we believe that it will remain difficult for people with multiple needs to gain effective access to care and support under the Act.

In addressing these issues, we have provided answers to questions 5; 7; 8; 13 and 47 of the consultation.

¹ The MEAM Coalition defines a person who suffers from multiple needs and exclusions as someone who: experiences several problems at the same time, such as offending, substance misuse, homelessness and mental ill-health; has ineffective contact with support services; and leads a chaotic lifestyle due to the interaction between their different support needs.

² Henceforth multiple needs and exclusions will simply be referred to as multiple needs.

Summary of our response

While all the points made in this response are important, we would recommend that the Department take urgent action on the following key issues:

- Find a practical and effective way to communicate information on assessments to people with multiple needs, whose health outcomes and educational attainment will often be below that of the general population.
- Provide further information in the guidance around the right of people with multiple needs to include professionals from the voluntary sector who may have a detailed knowledge of their condition in the assessment process.
- Acknowledge in the guidance that the preventative approach outlined in the guidance and regulations will suffer if local support services are not funded appropriately.
- Offer greater clarification around the Act's intended use of "*payments-for-outcomes*" and what this will mean for people with more complex levels of need.
- Learn from the work already conducted in the MEAM pilot areas around how best to increase wellbeing for people with multiple needs and make cost savings by encouraging the development of coordinated services.
- Ensure that the wording around the need for specialist assessors in the guidance accurately reflects the wording in the corresponding regulations.
- Rule out telephone assessments as inappropriate for people who the assessor suspects may experience multiple needs.
- Include further information in the guidance around how local authorities are to hold those parties who are not fulfilling their obligations around greater co-operation and integration to account.

Q5. Views are invited about how local authorities should co-ordinate and target information to those who have specific health and care and support needs.

Methods of communication

In providing any information and advice service, section **3.10** of the guidance states that a local authority "***must cover the needs of all its population, not just those who are in receipt of local authority funded care or support.***" This broad approach is welcomed by MEAM, particularly when considering how best to target information to those suffering from multiple needs who may not yet have received an assessment, or been in contact with a local support service. However, in order for this approach to be effective, we believe that the Department must clearly outline in the guidance the methods local authorities should use to engage with a cohort of people who have traditionally proved difficult to reach.

As is made clear through the individual research of each of the MEAM coalition partners,³ people with multiple needs will frequently have higher health needs, poorer health outcomes and lower levels of educational attainment than the general population. It is, therefore, vital that local authorities find practical ways to ensure that any information and advice service provided “*consider the people they are communicating with on a case-by-case basis*” (guidance, 3.4).

We suggest that:

- Clear examples of how to engage with this group are included in the guidance
- The guidance recommends that local authorities strengthen their partnerships with voluntary sector organisations in their local communities, who will often have considerable expertise in co-ordinating and targeting information to their service users. Each of the MEAM coalition partners operates an online, sector specific database, which could be used to help local authorities identify organisations working within their local communities.⁴
- The Department looks to some of the recommendations contained within the recently published independent consultation on the operation of Jobseekers Allowance sanctions. The review contains a number of useful points on how “*vulnerable people*” can often struggle to understand certain methods of communication and how this could be improved.⁵

Information around assessments

We believe that the guidance should place more emphasis on the need to provide information and advice about people’s rights regarding assessments, specifically their right to an assessment in the first place, their ability to refuse self-assessments, their right to advocacy and their right to request the involvement of those who may have a wider knowledge of their condition.

While section 6.18 of the guidance indicates that anyone who makes contact with a local authority “*should be given as much information as possible about the assessment process, prior to assessment*”, it would be helpful for this to explicitly include a requirement to ensure that people are fully aware of their ability to shape the process itself.

³ Clinks (2014) Good person-centred health care for offenders in the community: Evidence to support Care Quality Commission inspections; DrugScope (2012) Dual diagnosis: a challenge for the reformed NHS and for Public Health England; Homeless Link (2014) The unhealthy state of homelessness: health audit results 2014; Mind (2013) We Still Need to Talk pp. 22-23

⁴ Clinks’ *directory of offender services* can be found here: <http://www.clinks.org/directories>; DrugScope’s *Helpfinder* can be found here: <http://www.drugscope.org.uk/resources/helpfinder>; Homeless Link’s *Homeless UK* can be found here: <http://www.homelessuk.org/details.asp?id=LP10>; and information around local Minds can be found here: <http://www.mind.org.uk/information-support/local-minds/>

⁵ Matthew Oakley (2014) Independent review of the operation of Jobseekers Allowance sanctions validated by the Jobseekers Act 2013

The ability of people with multiple needs to draw on wider expertise, for example, is especially important in ensuring that their needs are assessed correctly. The difficulties associated with narrow assessments have been highlighted in research by the Joseph Rowntree Foundation, which concluded that the presence of multiple needs is often wrongly identified “*as evidence of ‘chaotic behaviour’ and does not generally trigger any differentiated or enhanced response from service providers.*”⁶

Although this entitlement is covered, to a certain extent, by sections **6.62**, **6.63** and **6.64** of the guidance, we feel that the information provided relates largely to local authorities’ ability to provide these kinds of assessments, as opposed to people’s ability to request them and that this should be addressed in the final draft of the guidance.

As above, we would ask that the guidance do more to emphasize the role of the voluntary sector in helping to identify people’s needs. For instance, as people have traditionally been referred to support services via programmes such as Supporting People,⁷ staff working in the criminal justice, substance misuse, homelessness and mental health sectors will have significant levels of expertise in assessing needs in these areas. This point should be made more clearly in the relevant section of the guidance to ensure that people are aware that they can call on this valuable expertise as part of their request for a more detailed assessment.

Q7. Does the statutory guidance provide a framework to support local authorities and their partners to take new approaches to commissioning and shape their local market?

Commissioning

A fundamental part of MEAM’s work is to encourage cross-sector collaborations between local voluntary and statutory services.⁸ The need for greater co-ordination between services feeds directly into the Act’s preventative agenda. If people with multiple needs can receive effective, coordinated support from external support services, this could well help to prevent any further escalation of their care and support needs. We suggest including a reference to the importance of local authorities encouraging coordinated services in paragraph **2.20** of the guidance.

However, it is important to understand that in order for local support services to engage in effective partnership working and the delivery of preventative approaches to care and support, they must first be adequately funded. This is especially relevant

⁶ Joseph Rowntree Foundation (2011) Tackling homelessness and exclusion: Understanding complex lives p. 12

⁷ Supporting People was a government programme for funding, planning and monitoring housing related support services. The programme ran from April 2003, but resources for it became ‘unringfenced’ in April 2009.

⁸ Further information on the MEAM approach can be found at: <http://meam.org.uk/the-meam-approach/>

at a time when local authorities continue to experience cuts to their budgets. Indeed, one of the main challenges listed by *Partnerships in Progress*, an interim evaluation of MEAM and its pilot projects, was the lack of capacity due to funding cuts faced by local services supporting people with multiple needs.⁹

An acknowledgement of this type would fit neatly in paragraph **4.18**, which states that local authorities “**must** facilitate markets to offer continuously improving, high-quality... services, including fostering a workforce which underpins the market.” **4.32** is also clear in its assertion that “*local authorities should not undertake any actions which may threaten the market as whole – for example, setting standard fee levels below an amount which is sustainable for providers in the long term*” and we suggest a reference to broader funding issues should be made in this paragraph too.

Payments-for-outcomes

There are already a number of Payment by Results (PbR) models employed in areas relevant to multiple needs,¹⁰ and we remained concerned that it will be extremely difficult for local authorities to incorporate elements of “*payments-for-outcomes*” (guidance, **4.16**) in a way that will encourage services to support people with more complex levels of need in the context of adult social care.

Ongoing concerns over provider’s freedom to innovate when following PbR models are reflected in a recent report by the National Council of Voluntary Organisations (NCVO), which concluded that PbR contracts often:

- “*contained targets which were either irrelevant to, or even detrimental to, the desired outcomes*”; and
- “*failed to account for the complex nature of the services they were for, meaning providers could be penalised for circumstances outside of their control*”.¹¹

The potential inability of services to tailor the outcomes they are expected to achieve to the needs of their service users is particularly important for people with multiple needs, who risk being excluded from the process due to the complexity of their conditions. PbR models can often favour those with lower levels of need, who are most likely to achieve the prescribed outcome (i.e. employment), unless there is an additional financial incentive to work with more challenging clients.

As a result, we recommend the guidance should state that when designing ‘*payments-for-outcomes*’ mechanisms, local authorities should consult with

⁹ A copy of *Partnerships in Progress* can be found at: <http://meam.org.uk/wp-content/uploads/2014/03/An-Interim-Evaluation-of-the-Making-Every-Adult-Matter-Final-Report-24-March-2014.pdf>

¹⁰ The Work Programme; Transforming Rehabilitation; Prison pilots with a focus on resettlement support (at HMP Doncaster and HMP Peterborough); Drug and Alcohol Recovery PbR pilots (in eight areas); and Troubled Families provide several relevant examples.

¹¹ A summary of the report is available at: <http://www.ncvo.org.uk/about-us/media-centre/press-releases/479-payment-by-results-implementation-seriously-flawed-new-report>

stakeholders and partners not just to ensure that “*innovation and individual choice and control are not undermined*”, but also to ensure the needs of those requiring longer and more intensive periods of support are taken into account.

In addition, in footnote **18** on page **44** of the guidance, it says that a document containing examples of outcomes based commissioning and relevant studies on cost-effectiveness is expected to be published in October 2014. If further detail is not provided in the guidance itself, we would encourage this document to make clear that certain, flexible “*proxies for outcomes*” (guidance, **4.16**) will be required if people with multiple needs are to achieve the person-centred objectives they have set for themselves.

Q8. Are there any further suggestions of case studies or tools that can assist local authorities in carrying out their market shaping and commissioning activities?

The MEAM pilot areas

In creating a diverse and successful market, the Act requires local authorities to integrate their care and support functions with services provided by the NHS and other external services, such as housing (guidance, **4.80 & 15.2**). The MEAM pilot projects in Cambridge and Derby provide two useful case studies of where this type of approach has delivered positive outcomes for people with multiple needs and cost savings for local services.¹² Eleven other areas across the country are also currently being supported by MEAM to develop coordinated interventions using the MEAM Approach and information on their progress is available on its website (www.theMEAMapproach.org.uk). We would be happy to work with the Department to develop some short case studies based on these examples to be included within the statutory or draft guidance, or in any accompanying commissioning guidance.

Wellbeing

One of the key roles of the Adult Social Care Outcomes Framework 2014/15 (ASCOF) is to promote more joined-up working at a local level through the identification of shared goals and responsibilities (ASCOF, **8**). Part of the reason that the MEAM pilots would prove informative for local authorities is their shared concern for wellbeing. In the two featured pilots – Cambridgeshire and Derby – wellbeing improved by a statistically significant amount according to a series of robust

¹² A report - *Evaluation of the MEAM pilots – Update on our findings* – detailing how these pilots were set up and run, including all the figures quoted in this section, can be found at: <http://meam.org.uk/wp-content/uploads/2014/02/MEAM-evaluation-FTI-update-17-Feb-2014.pdf>

measures, including the Warwick-Edinburgh Mental Well-Being Scale¹³ and the Outcomes Star.¹⁴

Cost savings

The pilots also recorded significant cost savings in relation to participant's use of public services. The overall cost reduction at the end of the pilots' second year was 26.4% (£958 per month per participant) in Cambridge and 15.8% (£484 per month per participant) in Derby. The extent of these savings offers a relevant example of how local authorities, if they are willing to persist with a consistent, long-term approach, can "*commission services having regard to the cost-effectiveness and value for money that the services offer for public funds*" (guidance, **4.24**). We would be pleased to work with the Department on a short piece of boxed text about the cost savings from the MEAM pilots for this section of the guidance.

Q13. What further circumstances are there in which a person undergoing assessment would require a specialist assessor? Please describe why a specialist assessor is needed, and what additional training is required above the requirement for the assessor to be appropriately trained to carry out the assessment in question.

Specialist Assessors

While it is welcome that section **6.75** of the guidance states that "*where the assessor does not have the knowledge in carrying an assessment for a specific condition, they must consult someone who has experience of the condition*", we would like to see this broadened out to accurately reflect the wording of the corresponding regulations. Clause **5 (3)** in the assessment regulations states that where necessary, the assessor must consult someone "*who has expertise in relation to the condition or **other circumstance** of the individual.*"

This expertise in the circumstances, as well as condition(s), of the person being assessed will be especially important for people with multiple needs whose needs arise as a result of the interplay between a series of conditions and circumstances that may include homelessness, substance misuse, mental health problems and contact with the criminal justice system. We would like to see this reference to 'other circumstance' reflected in the guidance as well as the regulations.

¹³ The Warwick-Edinburgh Mental Well-Being Scale was commissioned by NHS Health Scotland and developed by the University of Warwick and the University of Warwick.

¹⁴ The Outcomes Star is a suite of tools for supporting and measuring change when working with vulnerable people. It was developed by Triangle Consulting Social Enterprise Limited. Further information is available at: www.outcomestar.org.uk

Telephone assessments

Regardless of any training provided to assessors (guidance, **4.26**), we do not believe that telephone assessments can constitute an appropriate and proportionate assessment for people with multiple and complex needs, especially for those with mental health problems. Telephone assessments do not allow for an accurate understanding of the needs of a person with multiple needs, provide limited opportunities for people to meaningfully engage in the assessment process, do not give adequate opportunities to assess a person's need for advocacy or other support and will not take sufficient steps to consider the impact of the assessment itself on the individual's condition(s); all of which are requirements of an assessment according to the draft guidance. We request that the guidance explicitly rule out telephone assessments for people who the assessor suspects may experience multiple needs.

Q47. Does the draft statutory guidance provide a framework that will support local authorities and their partners to make integration a reality locally?

Local integration

We are fully supportive of the guidance's role in stimulating greater local integration between local authorities and their partners, and welcome the significant strategic steps it has taken towards achieving this aim. The commissioning of services based on local authorities' "*regularly reviewing trends in needs – including multiple and complex needs*" (guidance, **4.39**) should help to create an environment where services are able to work together more effectively.

As people with multiple needs will often have contact with services in more than one area, we are also particularly pleased to note the guidance's efforts to broaden the scope of organisations that must take responsibility for people with care and support needs (**15.21**). The Act and the guidance's renewed focus on the 'wellbeing principle' should also make it easier for services working with those who have not traditionally been the recipients of adult social care, such as homeless people with multiple needs, to represent the needs of their services users in terms of their detriment to wellbeing.

Accountability

We would, however, recommend that the Department include more in the guidance about how they intend to hold local authorities to account if they are unable to ensure co-operation between those responsible for "*adult social care and support, housing, public health and children's services*" (guidance, **15.23**). This recommendation is based on concerns about the inability of other strategic initiatives to fully implement practical changes to encourage greater integration between local services.

For example, current hospital discharge policy has been designed to ensure that those who require further care on leaving hospital (“*complex discharges*”) are provided with an appropriate referral to a local service.¹⁵ Despite this stated aim, questions have been raised over the lack of enforcement of this policy. In 2013, the Department of Health launched the Homeless Hospital Discharge Fund with the express intention “*to stamp out the bad practice we know exists*”.¹⁶ The NHS’ new consumer champion, Healthwatch England, is also sufficiently concerned to have launched its own inquiry into unsafe discharge.¹⁷

Although we fully accept that the Act cannot impose statutory obligations across the board, the guidance should remind “*relevant partners*” that they remain accountable to their local populations for their actions. This is especially relevant to situations where local authorities decide to delegate some of their care and support functions to other parties (guidance, **18.2**).

Conclusion

MEAM sees much to welcome in the new Act and its accompanying guidance. We believe the recommendations we have made will help local authorities use their powers under the Act to provide more effective support to people experiencing multiple needs. We would welcome further dialogue on any of the issues discussed.

Acknowledgments

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¹⁵ <http://www.nhs.uk/NHSEngland/AboutNHSservices/NHShospitals/Pages/leaving-hospital.aspx>

¹⁶ <https://www.gov.uk/government/news/ten-million-pound-cash-boost-to-improve-the-health-of-homeless-people>

¹⁷ <http://www.healthwatch.co.uk/then-what-special-inquiry>