Toward a new eligibility framework that serves the interests of both service users and councils

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Abstract

The call by the Dilnot Commission for an overhaul of the eligibility and assessment framework will be broadly welcomed. It creates a golden opportunity to put right some fundamental issues that have bedevilled social care for a long time. Whatever the fate of the other recommendations of Dilnot, it has to be hoped that this particular recommendation will be accepted. However, continuing belief in some key, but flawed, concepts creates a risk that a review will perpetuate the worst, and not the best, aspects of current and past policies. This would condemn social care to continued confusion, unfairness and lack of transparency. This paper argues that if a review were to build from the best of what has so far been attempted, and accept the lessons of what has not worked, an approach can be created that enables the best possible realisation of the vision for social care for the greatest number of service users within existing funding, with the best hope in the longer term of bringing about a closer match of needs and funding.

Keywords: Person-centred practice, eligibility, service users, social care

Introduction

The requirement for an eligibility framework arises from the premise that the resource available will not be enough to meet the volume of need the community would wish to meet. The job of the framework is to ensure the rationing of resources is carried out in a way that is fair, transparent and effective.

Few would disagree with this aim. However, it has proved elusive to achieve. Practitioners have long complained that while they strive for best practice in getting to understand and support their service users, their work is undermined by what the council requires of them in delivering the processes to ration resources. Commentators have observed that there is an inevitable conflict of interest between the interests of the service user and the interests of the council.

This paper contends that it is perfectly possible for the two sets of interests to be reconciled. It is not the fact that resources have to be rationed that has caused the current tensions, but the way it has been carried out. However, achieving this reconciliation of interests will require significant changes to the current approach to eligibility. These changes will, in turn, both require and lead to:

- a re-invigoration of the political processes that determine funding levels;
- best, person-centred practice moving from being merely desirable to a requirement to ensure delivery of the new policy.

The paper examines the prospects for a new eligibility framework by discussing:

- the extent to which the current eligibility framework - Fair Access to Care Services (FACS) - has failed – to provide a sense of the scale of change required;
- why FACS has failed – to inform the nature of change required;
- the vision of what an eligibility framework should achieve – to set the test of fitness for purpose;
- the innovations required to deliver the vision;
- the resource allocation process and prioritisation of needs – it is important...
to be clear about the points at which decisions are made and in particular, how the eligibility framework works with Personal Budgets;

- **what needs to be in place to deliver the proposed approach** – the elements of practice, process and politics that will be required to deliver the new framework.

**a. The extent to which the current framework has failed**

Fair Access to Care Services (FACS) is the current eligibility framework. It was introduced in 2002 to bring national consistency in the way councils made decisions about resource allocation.

Whilst FACS is often blamed for restrictive and short sighted decisions, paradoxically the evidence is that it has a very weak influence.

In 2008, the Audit Commission examined patterns of spending of all councils and compared it to the different eligibility thresholds they employed. They found there was no significant relationship between the criteria councils used and their level of spend.

The Guardian reported in 2011 that Sunderland was the only council in the country to have no eligibility threshold, and were meeting needs at all four levels of priority (Brindle, 2011). However, this was not creating a financial pressure. Indeed, in 2009/10 Sunderland spent £4.8K per 10,000 population compared with a national average of £4.6K, within a range of £2.9K to £7K. Given that Sunderland serves the 29th most deprived community in the country (out of 152), with deprivation increasing demand, their level of spend is, if anything, comparatively low.

No council operates a different set of eligibility criteria between user groups. However, Table 1 shows very different levels of spend per service user between older people and working age people.

**Table 1 Average national net spend per service user 2009/10**

<table>
<thead>
<tr>
<th>OLDER PEOPLE</th>
<th>WORKING AGE PEOPLE</th>
</tr>
</thead>
<tbody>
<tr>
<td>£6.5k</td>
<td>£12.2k</td>
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</table>

*Raw data regarding number of service users and aggregate spend taken from Department of Health National Adult Social Care Information System*

Though it could be claimed that it costs less to meet the needs of older people than working age people, there is no evidence to support this view. The more likely explanation, which accords with anecdotal evidence from practitioners, is that working age people are more likely to have a broader range of needs addressed. In practice, ‘critical’ and ‘substantial’ has very different meaning for different user groups, with FACS failing to expose, let alone address, what many believe to be inherent ageism within the service.

**Table 2 Spend per service user with Direct Payments and all other service users with community services 2009/10**

<table>
<thead>
<tr>
<th>OLDER PEOPLE</th>
<th>WORKING AGE PEOPLE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Direct Payments</td>
<td>All other community</td>
</tr>
<tr>
<td>£5.2k</td>
<td>£2.9k</td>
</tr>
</tbody>
</table>

*Raw data regarding number of service users and aggregate spend taken from Department of Health National Adult Social Care Information System*
There is a large differential between Direct Payment recipients and all others who receive non residential care, even within the different age groups, despite there being no difference in application of FACS policy between Direct Payment recipients and the rest (Table 2).

All service users who need continuing support are offered Direct Payments, so complexity does not account for this differential. There are low value as well as high value Direct Payments. The explanation is more likely to rest in the way resource allocation decisions are made. A study by the Office for Public Management into outcomes for Direct Payment recipients in Essex (Holloway, 2011) found that service users reported the importance of being articulate and able to stand their ground when dealing with the council’s staff. This can be expected to apply when discussing levels of resource (likely to have been further influenced by council staff under target based pressure to increase numbers with a Direct Payment). Service users with a Direct Payment were able to meet a much broader range of needs including leisure and social engagement, and family carers under much less stress. Some were even able to meet health care needs their local NHS did not.

These findings were replicated in a much larger survey in 2011 of 2,000 people with Personal Budgets carried out by In Control – a not-for-profit organisation that campaigned for the introduction of Personal Budgets. This was the National Personal Budget Survey, June 2011 (Hatton, 2011). The survey found that those who took their budget as a Direct Payment were more likely to have a greater range of needs met, and their family carers under less stress, than those who did not have a Direct Payment. Another study (Woolham, 2009), in a Midlands council, compared the costs and benefits of Personal Budget recipients with those without. All Direct Payment service users became Personal Budget holders, resulting in most Personal Budget holders being Direct Payment recipients. It found that the average value of the package for those with a Personal Budget was 44% greater than for those without. The figure was 111% in relation to older people. Those with a Direct Payment had better outcomes, albeit not substantially.

The very real problems of resource shortfall experienced by service users in recent years are more likely due to the growing gap between demand (with well known causes) and resources. The real criticism of FACS is that it has failed to have any impact, with the patterns of spend set out above little different from how it was in 2001 before FACS was introduced. Having nearly 90% of councils with the same eligibility threshold (‘critical’ and ‘substantial’) might give the appearance of fairness and consistency. However, the data above shows the appearance is entirely spurious, concealing very different interpretations between service user groups and of resource levels.

b. Why is FACS not working?

Henwood and Hudson (2008) carried out qualitative research into the workings of FACS for the Commission for Social Care Inspection. Interviewing over 100 practitioners and service users, they found what might be described as cold indifference to people not considered eligible and also to the lower priority needs of those who were. One of their findings (Henwood & Hudson, 2008, p.122) was that:

*The precise point at which councils establish the threshold for FACS eligibility is not necessarily a predictor of how criteria operate in practice.*

They differentiated between resource rationing policy set by direction through hierarchical authority, and that by discretion through practitioners’ interpretation, and found the two not pulling together. Their work informed the Commission in developing the report *Cutting the Cake Fairly* (CSCI, 2008). CSCI recommended the replacement of FACS with a new framework with three levels of ‘priority for intervention’ in turn based on the immediacy of the need – immediate, early intervention and longer term intervention.
This paper argues that the CSCI analysis does not go far enough. The rest of this section addresses three fundamental flaws that render the current approach to FACS unfit for purpose:

- the financial strategy is undeliverable;
- it damagingly conflates two very different groups of needs into one;
- the band definitions are confused and require too much subjectivity.

The financial strategy is undeliverable

FACS makes clear that while all of a person’s needs should be explored (the ‘presenting’ needs) only some of them need to be met. These are called ‘eligible’ needs. The council should set its eligibility threshold at one of the four levels of priority and do so on the basis of how much money it has available. Needs above the threshold will be met and needs below it need not be. FACS does encourage councils to invest in services to meet needs at lower levels of priority to be accessed outside the assessment process. However, the amounts of money are in practice small as are the levels of service. There can be no expectation that the services purchased will address all lower priority needs. Further, the approach replicates the very worst practices that the personalisation strategy seeks to overcome, whereby people either have to fit into pre-purchased services, or have nothing.

The probability that the available level of resource will cover precisely the categories above the chosen threshold is virtually nil:

- councils meet a very large number of needs, with no two needs the same and each calling for their own unique level of resource to meet;
- as the FACS guidance acknowledges, there is no relationship between the priority of a need and the cost of meeting it;
- some needs are one-off, some short term and some continuing.

What happens in practice derives from the overriding imperative to ensure spend matches budget. Once the budget is set, spend is matched to it by the definition of an ‘eligible’ need expanding or contracting according to budget availability. This applies between councils, and between user groups within councils.

Diagram 1 The relationship between budget, spend and interpretations of the priority bands

![Diagram](image-url)
The ‘eligibility threshold’ is used as little more than a crude signal as to relative generosity or parsimony. A recent paper prepared for the London Branch of Association of Directors of Adult Social Services (Carlin, 2010) showed:

- one council contemplating going from ‘moderate’ to ‘critical’ only – a 66% reduction in needs to be met – but estimated this would reduce spending by a mere 4%;
- another was thinking of going from ‘moderate’ to ‘critical’ and ‘substantial’ – a 33% reduction in needs to be met – but estimated this would reduce spending by 0.2%;
- a third proposed going to ‘critical’ only from ‘substantial’ – a 50% reduction in needs to be met – and estimated this would reduce spending by 2.5%.

Conflation of two very different groups of needs into one

The approach fails to distinguish two very different types of need below the eligibility threshold:

- **Needs it would be appropriate for the person to meet for him or herself,** or their support system or community. This includes needs that otherwise would be ‘eligible’ but it is right and proper they are met by the person or their network having regard to willingness and ability.

- **Needs it would be appropriate for the council to meet** but which fall below the eligibility threshold. The threshold is set by reference to affordability, not appropriateness of response through reference to reasonableness of expectations within contemporary society.

Conflating these two groups into one taints the view of both. It is not uncommon to hear it said that councils should not meet ‘moderate’ and ‘low’ needs as a matter of worthy principle. Either they are not important, or people should meet such needs themselves. However, a need cannot cease to be a need simply by virtue of a council being unable to afford to meet it. This point was starkly highlighted in the recent case heard in the Supreme Court of McDonald v Kensington (2011). McDonald required support to go to the toilet during the night as she could not safely transfer from her bed. The council said that use of incontinence pads would meet her needs. McDonald’s view was a carer would enable her to make the transfer and retain her dignity. However, this would cost £200 a week. That, in effect, was the cost of meeting her need for dignity.

The Department of Health created this position in the context of a widely held anxiety that if a need were to be acknowledged, it would oblige the council to meet it. However, this is an overreaction to the law. Lord Clyde, who sat in the landmark Gloucestershire v Barry judgment in 1997 that drove the original drafting of FACS, made the following observation in relation to section 2 of the Chronically Sick and Disabled Persons Act 1970, which was and remains the key statute driving national policy. Section 2 places a duty on councils to meet needs which it believes are ‘necessary for it to meet’.

... *The words ‘necessary’ and ‘needs’ are both relative expressions, admitting in each case a considerable range of meaning. They are not defined in the Act... In deciding whether there is a necessity to meet the needs of the individual some criteria have to be provided. Such criteria are required both to determine whether there is a necessity at all or only, for example, a desirability, and also to assess the degree of necessity.*

The true legal position is therefore that needs which fall below the council’s chosen ‘eligibility threshold’ **can**. of course, be met. Whether or not they are met is a matter of discretion for the council. Whether or not they are met can lawfully be determined by budget availability, unlike needs above the ‘eligibility threshold’.
This does, of course, raise the spectre of unmet need as not all needs will be affordable. However, Professor Luke Clements makes the point (Community Care and the Law, 2004, p.122) that there can be:

... no legal problem with the term if defined (as it is in the Welsh guidance) as presented needs that are not evaluated as eligible.

Unmet need below the threshold can lawfully be a matter of record. He goes on to note that the English FACS guidance does not contradict this, but is ‘oblique on the question’.

**Definition of the bands**
The descriptors of the bands render clarity and consistency all but impossible.

- In *Cutting the Cake Fairly*, CSCI described the wording of the bands as ‘convoluted’. The language is jargonistic and inaccessible to practitioners and service users.
- Decisions about eligibility are based on the separate needs the person has, which is key to driving the amount of resource (or size of Personal Budget) offered. However, much of the wording can only be applied to the *whole person*. This is because the distinction between the bands is frequently couched in terms of the *numbers* of their needs – ‘few’, ‘several’, ‘majority’. This is impossible to apply to a person’s separate needs.
- The descriptors confuse *needs* with *tasks, activities and processes*:

  ‘*Personal care*’ is a task not a need. Provision of the personal care may be the difference between a person being clean or not and is therefore (probably) a ‘substantial’ need. But if, say, the person would struggle to do the task themselves (or with a carer) without undue danger to their safety, but a service will make their lives a little easier, the underlying *need* is of a different order.

  ‘*Ability to carry out domestic routines*’ may be the difference between living in a hygienic home, or an aesthetically pleasing one.

  ‘*Choice and control*’ relate to the process to determine needs, support requirements and how support is delivered. The risk to levels of empowerment comes from practice and process more than resource allocation decisions.

  There are several words, such as ‘*vital*’, requiring highly subjective interpretation.

These flaws conspire to create the conditions that led to the sorry findings of Henwood and Hudson referred to in the opening paragraph of this section, and to the failure of FACS to have the constructive impact required of it.

**c. The vision of what an eligibility framework must achieve**

It is important to be clear what the new framework should achieve.

*Supporting a resource allocation process that does not undermine the vision for social care*

The assessment and support planning process needs to deliver two key functions:

- articulation of issues, needs, outcomes and service requirements to ensure the best possible choices are made along with the engagement of the service user;
- creation of the understanding to support resource allocation decisions.

The eligibility framework has to ensure these two functions are fully reconciled. The view that the interests of councils and those of their service users make this impossible is a fallacy that should be challenged. There is valuable research that identifies the elements of best, person-centred practice. Most recently, Peter Beresford *et al.* (2011) published the outcomes of extensive research into person-centred practice under the auspices of Joseph Rowntree’s: *The Standards We Expect*. The function of policy should be not merely to
support, but positively to require such best practice.

Enablement of precise matching of spend to budget
It is an inarguable reality that directors have an imperative to spend within budget each year – they face dismissal if they do not.

Enablement of sensible decisions about use of resources
Getting the most value from resources requires flexible decision making.

Enablement of legal responsibilities to be met
Councils must be crystal clear about what the law requires and permits.

Enablement of decisions about resource allocation that are rooted in concepts that are clear and meaningful to service users, members of the public and politicians
It is important that all stakeholders – primarily those who receive resources and those who fund them – understand why needs are met, and why they are not. Service users may have to come to terms with managing with less support than they require. It is important for political leaders to understand what is being achieved by the level of funding they are making available.

Enablement of the right balance between centralism and localism
Whilst some argue for social care to be funded in the same way as the NHS, this does not appear likely. It is important to achieve the right balance between the national and local responsibilities in the desire to secure an appropriate degree of equity nationally.

d. The innovations required to deliver the vision
It is contended that the following two innovations will address the flaws set out in section b and deliver the vision in section c:

- defining the bands so they are based on universal needs;
- redefining the threshold of eligibility and introducing a concept of a threshold of duty.

Define the priority bands based on universal needs
Ultimately, whilst there are outcomes to be achieved along the way, the value of all social care activity can be judged in terms of the extent to which any of the universal human needs are met. An example is a person who is unable to use their stairs and has to sleep downstairs and use a commode downstairs. While the immediate outcome of a service might be to enable the person to use their whole house again, the ultimate outcome will be about restoring dignity and self worth. Alternatively, if the person cannot sleep downstairs or use a commode, the ultimate outcome will be about meeting basic physiological needs – arguably, of a different order of importance. It is the ultimate outcome that is of importance to the person. It also provides the rationale for providing the service. This should be the basis of making decisions about priority.

The existence of universal human need is not contended. There is scope to define them in different ways, and critically, scope to understand the relationship between them. Albert Maslow (Motivation and Personality, 1954) proposed a hierarchy, progressing from physiological to self realisation needs, having to meet the former needs before progressing to the latter. This theory lends itself well to the idea of prioritising needs in a straightforward way. However, Victor Frankl (Man's Search for Meaning, 1946) believed the relationship between needs was more complex. Drawing on his experience as a holocaust survivor, he saw that those who survived the physical suffering were those able to satisfy needs that give meaning to life. This introduces the notion of each individual having their own view of the relative importance of their needs, or perhaps, the level of satisfaction at each level that they require.
The new framework should have the ability to work with both approaches. If the key test is what should be done with the last pound available, and help can be given to someone who is hungry or someone requiring support to meet a leisure need, most people are likely to believe it is right to spend it on the former. However, there can be scope for flexibility, set out in the next section, for each individual for whom meeting what for most might be a lower priority need is of greater importance.

The following levels of needs, based on the current number of four within FACS, are ones that are likely to be familiar to people involved in social care:

- the need to **survive**
- the need to be **safe and healthy**
- the need for **self worth**
- the need for **personal fulfilment**.

However, it is important to replace the words ‘critical’, ‘substantial’, ‘moderate’ and ‘low’. They create the impression that the lower priority needs are not important. This is not the case, with needs of a more social and emotional nature of fundamental importance to quality of life and therefore the aims of social care.

In effect, the top two levels of need represent *keeping safe and well*, while levels three and four are about *making life rewarding*.

Diagram 2  A possible needs based eligibility framework
Using these definitions will support consistency of application given that all people will be able to recognise needs seen in this way. Service users will better understand the priority attached to their needs, practitioners able to identify the appropriate level of priority, and for supervisors to identify any ‘gaming’ behaviour designed to increase priority.

Redefining eligibility and introducing a new concept of a threshold of duty
A need should be described as eligible if, firstly, it is one that has to be met to achieve the council’s declared vision for social care (which can be expected to include reference to independence and well-being), and secondly, if it is not appropriate for it to be met by the person, their support network or the local community. This should be the point of the eligibility threshold. This would replace the current tying of eligibility to affordability.

Eligible needs should, then, be divided into those that are a duty for the council to meet, and those that are discretionary. This creates a duty threshold. Needs that fall above the threshold of duty have to be met, albeit in the most cost-efficient way. The priority framework should continue to be used to determine where this falls. This creates an opportunity to set a national minimum offer, most likely set at the top two levels, thereby guaranteeing that all people can expect to be helped to be safe and well (Diagram 2).

A similar approach can be taken for carers’ needs (although the legal framework currently makes all contribution to supporting carers discretionary, and not duty-based).

The decision to meet a need that falls into the discretionary area should take into account:

- the cost
- budget availability
- the priority
- value for money in terms of preventive impact it may have.

Working in this way will have the following benefits:

- Subject to having the resource to meet all needs above the duty threshold (which has to be the case), the council will be able to precisely match spend to budget without subverting the meaning of the bands.
- It makes best possible use of resources.
- The council will know the cost of unmet need. This can be used in two ways. Firstly to adjust local budgets to achieve equity across user groups. Secondly, it will ensure the council will have information about the full cost of delivering its vision for social care.
- Diagram 3 shows the new relationship between priority of need, budget and spend, comparing with the current relationship as described in section b.

This approach creates a framework to achieve an appropriate relationship between centralism and localism. There are equal risks at both ends of the spectrum. At one end is the ‘postcode lottery’ where there can be little relationship between the ways in which two different councils operate.

However, at the other extreme is the wish to achieve a level of objective standardisation - supported by a range of assessment tools such as the Single Assessment Process and the Resource Allocation System (RAS) - that can drive out the quality of exchange that enables a true and accurate understanding of the person and their situation. There are great risks in the concept of the ‘portable assessment’ that Dilnot (however understandably) favours. It is based on the premise that a person’s needs do not change with locality. However, this is a false premise. While their impairment may not change, all other factors that interact with the impairment to create the issues to address can change enormously. The person may be more or less confident and optimistic, their informal support systems very different, the local community supports very different.
Diagram 3  Appropriate relationship between budget, spend and priority bands

It would be a serious error if the drive for consistency between councils was rooted in a continued belief in the objectification of social care needs that does not match reality. It will lead to the continuation of a spurious appearance of consistency which conceals major inconsistencies.

The national position should have the following requirements:

- The threshold of duty set at a national level, with the most likely to be set at ensuring people are safe and well. This, in effect, becomes a national minimum guarantee.
- Councils are required, ideally through a new statutory principle following the planned review of the law, to base their decisions about eligibility of needs on seeking to ensure that all enjoy well-being and independent living, but falling short of a duty to meet all relevant needs in the short term.
- Councils to make public the extent of the eligible needs they cannot meet and the cost of doing so and feed this into the political resource allocation processes. This should be supported through a change in the law to place a new duty on Directors of Social Services to deliver this.

This approach will, on first hearing, create two sources of anxiety:

- Councils will say they can scarcely keep pace with demand within the duty band, and so the discretionary band will be irrelevant. However, the re-definition of the bands will reveal a lower level of current spending at what councils
believe is the *duty* level than they presently realise. They are already, for some groups at least, and in an unmanaged way, meeting a substantial volume of needs in what will be the discretionary band.

- Service user representatives will be concerned councils will respond by meeting needs above the duty threshold only and to see the discretionary element as not important. The counter argument is that councils who behave in this way will be forced to declare their vision is limited to only keeping people safe and well, and that they have no commitment to the well-being and independence of their most vulnerable citizens. This will create political tension. Service user groups will need to switch their attention from the judicial processes as a way to enforce higher spending to ensuring local political processes are working as they should.

e. The resource allocation process and prioritisation of needs

There are three options for the point at which it is decided how much resource to allocate, each with different implications for which needs are met:

1. A full ‘upfront’ allocation of money for a Personal Budget. It would require the up-coming review of the law to place an obligation on councils to meet all levels of need. The financial risks would be enormous. It is hard to imagine any government agreeing to it.

2. Retain the concept of ‘upfront’ allocation, but coming between assessment of need and support planning and with it reduced to being ‘indicative’ only.

3. Allocate resources following both assessment and support planning.

Currently, there is a hybrid of two and three. The following sets out the reasons for making a firm choice between them.

The steps required are set out in Diagram 4.

A reason for choosing the ‘upfront’ option is that it retains as much as possible of the original notion of what a Personal Budget means. However, it creates key difficulties:

- It puts a step in the process in order to create the ‘indicative budget’. This has often been delivered by various Resource Allocation Systems (RAS). They require tick box processes to arrive at a quantitative value to attach to dependencies and the informal social capital available to meet them. This cannot take the place of a proper assessment of need, which calls for a creative and person-centred process to arrive at an understanding of the person and their situation.

- The ‘indicative budget’, to meet the requirement of the Department of Health’s definition of a Personal Budget, has to be a minimum entitlement to have any meaning. This is set out in the criteria for satisfying the requirement to meet the target for the numbers of people with a Personal Budget:

   *The person (or their representative) has been informed about a clear, upfront allocation of funding, enabling them to plan their support arrangements.* (CLG, 2009, p.144)

Whilst it will be in order for the actual Personal Budget to be *more* than the indicative budget (usually when required to ensure legal duties are met), it will arguably be a breach of the above requirement for it to be *less*. In effect, the indicative budget becomes an *entitlement* below which the actual budget will not fall.
Such a position would be close to the original In Control vision for upfront allocations. Indeed this interpretation is reinforced by the recent work by Duffy (see *Simplifying the RAS*):

*Families must know that they can safely plan up to the agreed level without having their plan picked over.* (Duffy, 2011, para. 21)

This potentially creates a lottery in relation to which needs that fall below the duty threshold are met. If the person is fortunate enough to be able to have their needs at the duty level met relatively inexpensively, they can go on to meet more of their needs that determine quality of life than if they were not so fortunate. It cannot be ruled out that they will even be given more money than required to meet all their needs.

In practice, it appears even this limited vision of what upfront allocation is about is not happening. Councils are continuing to make decisions about the actual Personal Budget after support planning.

A report by Tyson (2009) for In Control about Hartlepool’s progress in delivering the In Control model (see *Self Directed Support in Hartlepool, 2006-9*) shows that the actual budget is as likely to be below the indicative budget as above it. A freedom of information request of Essex revealed that throughout 2010/11, there was no occasion when the actual Personal Budget was the same as the indicative budget, while on 68% of occasions it was over 20% different. This suggests while the indicative budget adds bureaucracy, it has little or no effective operational value.
Option 2 offers the least bureaucratic and most straightforward option. This will invoke the criticism that it simply retains the failed status quo. The counter argument is that up front allocations were primarily no more than a means to an end, i.e. to allow people to choose the supports and services that will best meet their needs rather than choose from a pre-purchased menu. Option 2 will work perfectly well with that aim as long as councils divest themselves of pre-purchased services to the greatest appropriate degree so that their resources are cash based. Such freedom of choice would allow the option of continuing to describe the council’s contribution to the Support Plan as a Personal Budget. This will no doubt be important given the commitment this government has declared to the concept.

f. What needs to be in place to make this work

The nature of assessments
The assessment has to create an understanding of the person’s situation that analyses and makes the links between:

- the issues confronting the person
- the needs arising from the issues
- the current and potential value of the person’s social capital in addressing these issues
- the outcomes to be pursued in addressing the issues.

This requires best, person-centred practice. It cannot be achieved without the person’s engagement from beginning to end (or a representative who is acting authentically in the person’s best interests as required by the Mental Capacity Act 2005) given the complexity and nuances involved, even in low risk situations. Approaches recently developed such as the Single Assessment Process and the RAS that are designed to collect information for the council through a battery of closed questions will not deliver this requirement.

Effective budget management systems
Defining eligibility on the basis of need, not affordability, will result in a higher rate of operational decisions to be made. Budgets will best be held at team level. To support budget holders, councils will need to provide them with reliable information about the budget and commitments on a continuous basis.

Strategic information systems
Councils will need information systems that report on the levels of need that are met and the levels of eligible need that are not met on a user group by user group basis.

New national guidance
Clearly, revised national guidance will be important. However, it is arguably possible for a council to work in the ways set out here within current guidance. This does not rule out the ability of councils to meet needs below the ‘eligibility’ threshold (as currently defined), or the concept of unmet need (Clements, 2004). Also, the 2010 guidance permits subtly broader interpretation of the bands than the 2003 guidance allowed.

Change to the law
No change to the law in relation to the way needs are assessed and funded is required to make the ideas in this paper work. However, it may be helpful if the idea in the Dilnot Report - of having a national minimum level of need to be met (Dilnot, 2011) - was to form the basis of the level of legal duty to replace section 2 of the Chronically Sick and Disabled Persons Act, which is anachronistic given that it lists services particular to the 1970s. Dilnot recommends that this should be at the current level of ‘substantial’, which would equate to ensuring that all people who need state support are safe and well.

It will, however, be very valuable if the new laws include Statutory Principles as the Law Commission proposes, and those principles include a statement of what the Commission calls a ‘single unifying purpose’ (Law Commission, 2011, p.19). It should be
expressed in terms of well-being and independence.

It will also be helpful to place a legal duty on Directors of Social Services to ensure their members are kept informed about the extent to which needs are met and not met, and the level of resource required to meet all needs that will ensure people are able to live independently and enjoy well-being.

**Invigorated political process**

In recent years, the tension between needs and funding has been played out through the judicial system within a rights based approach to funding. Both councils and user representatives have committed to this. However, it is arguably an inappropriate way to resolve what are essentially political issues. The judge in the recent High Court case addressing Birmingham’s plan to reduce eligibility to ‘critical’ only, made the following point (W, M, G & H v Birmingham City Council, May 2011):

> In general it was submitted that courts should be very wary not to intervene in questions involving the balancing of competing claims, which were matters for expertise, specialist knowledge, local policy and democratic accountability. Lord Millett in Southwark London Borough Council v Mills [2001] 1 AC 1 had said that judges were not equipped to resolve issues of priority in the allocation of resources.

The proposals in this paper shift the focus back to the political system. Exposure of unmet need will create political tension. This will test the commitment of national and local politicians to a more transparent politics. It will be hard, however, to argue against making publicly available intelligence about the cost of delivering a community’s vision for a key public service, with a view to either changing the vision following public debate or progressively finding the resource to deliver it. To use a common phrase, it will be about ‘putting your money where your mouth is’.

**Conclusion**

A wholly new approach to eligibility is required if the resource allocation process is to support, and not undermine, social care delivering on its commitment to offer independence and well-being as best it can, to do so fairly and transparently, and to inform strategic planning. The new eligibility framework should be based on universal human needs; whereby everyone is able to make sense of it and engage in the individual and strategic issues that are engendered by the rationing process. It should provide a national minimum guarantee of needs to be met, and beyond that, support flexible decision making within the budget to ensure the best possible value is secured from scarce resources. It should require the best standards of person-centred practice to inform skilled and intelligent decision making. It should bring about the full engagement of the political process in managing the dynamic between funding levels and the range of needs that can be met.

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**References**


Toward a new eligibility framework


Notes on Contributor

Colin Slasberg is a qualified Social Worker and has worked for over thirty years in Shire and Unitary Councils as a practitioner, team manager, area manager, strategic planner, Assistant Director of Resources and independent consultant. He led a programme of transformation over a five year period in a Unitary Council built around the concept of outcome based commissioning. This changed the way strategic commissioning was delivered, the way providers delivered care and support, and the way assessment and support planning was delivered. Colin has had an enduring interest in addressing the issues of eligibility and priority of need dating back to the Community Care reforms of the early 1990s.

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