



Department
of Health &
Social Care

From Caroline Dinenege MP
Minister of State for Care

39 Victoria Street
London
SW1H 0EU

020 7210 4850

PO-1181345

27 SEP 2019

Ms Tracey Lazard
Chief Executive Officer
Inclusion London
By email to: tracey.lazard@inclusionlondon.org.uk

Dear Ms Lazard,

Thank you for your correspondence of 26 June in which you raise your concerns about an appeals system for social care and how the Care Act 2014 is being implemented in terms of promoting wellbeing, choice and control. I apologise for the delay in replying.

It is important that, where people feel an incorrect decision may have been made in relation to their care and support, they have an effective means to have the decision reviewed. As you highlight, the implementation of the appeals system set out in the Care Act 2014 was provided for in a part of the Act that has been delayed. However, adults who use the care and support system can continue to use the existing complaints process, as they do now.

The local authority should take all reasonable steps to avoid disputes regarding decisions made about an individual's care. This should include involving the person as far as is practicable in the process. Care Act guidance sets out that local authorities must provide information and advice to people on the assessment process, their eligibility and the review stage, how to complain or make a formal appeal to the authority, and when independent advocacy should be provided.

As with all aspects of care and support under the Act, local authorities must also fulfil their responsibilities under the Mental Capacity Act, conducting a capacity assessment where appropriate, supporting individuals who may lack capacity to make a decision themselves (for example, presenting information in an easy-to-understand format) and, where the individual is lacking capacity in regard to the specific question, involving family, carers, advocates and any appropriate person to arrive at a best interests decision.

The local authority should also be able to reduce the number of potential disputes by providing information and advice that enables the person to understand how a decision has been arrived at and by abiding by the principles of transparency, timeliness and sufficiency. If the person remains dissatisfied with the local authority's responses to a complaint, they ultimately have the right to take the matter to the Local Government and Social Care Ombudsman.

Further decisions on appeals would be made in the context of wider reform.

Turning to the wellbeing principle in the Care Act, local authorities are required to promote the wellbeing of the people in their local area. The wellbeing principle applies in all cases where a local authority is carrying out a care and support function or making a decision about a person.

On the issue of local authorities placing restrictions on direct payments, there should be no constraints set on how the personal budget can be spent, providing it meets the individual's needs as identified in their care and support plan and has been agreed and signed off by those responsible. The local authority has to satisfy itself that the decision is an appropriate and legal way to meet needs. It should take steps to avoid the decision being made on the assumption that the views of the professional are more valid than those of the person. Above all, the local authority should refrain from any action that could be seen to restrict choice and impede flexibility.

Think Local Act Personal recently published recommendations to support Care Act statutory guidance in relation to personal budgets and the use of payment cards in social care. The recommendations are designed to support best practice, ensure greater consistency in the use of payment cards nationally, and ensure that any use of pre-paid cards still enables individuals to exercise the level of choice and control they want. I have endorsed this guidance, as it is vital that when individuals receive a personal budget they have access to the full range of options, including whether or not to have a direct payment, and whether this is provided through a pre-paid card.

It is the responsibility of local authorities to give people clear advice about their responsibilities when managing direct payments; for example, whether the person in receipt of direct payments needs to register with HM Revenue and Customs as an employer. We have also commissioned Skills for Care and Think Local Act Personal to produce a range of additional support materials for those requiring care. Much advice and published guidance is already available to support individuals when making decisions on procuring the services of self-employed carers. This covers, for example, personal assistant employment law, pension schemes, health and safety, and insurance.

In terms of access to advocacy, local authorities have a duty to provide an independent advocate to help a person's involvement in the care and support assessment, planning and review processes. This should be available for individuals who would experience substantial difficulty in understanding, retaining or using information given, or in communicating their views, wishes or feelings and where there is nobody else appropriate to help.

Turning to your concerns about the eligibility threshold criteria excluding disabled people from care and support, all councils have statutory duties to look after the vulnerable, elderly and disabled people in their area. By passing the Care Act, the Government established a national threshold that defines the needs that local authorities must meet. This eliminates the postcode lottery of eligibility across England.

In 2017/18, local authorities in England advised over 500,000 people on how to access services to meet their care needs. This includes services provided by leisure, housing, transport and care providers as well as voluntary groups.

In terms of monitoring local authority performance, councils are accountable to their local populations; this includes accountability for meeting their statutory duties. The Department monitors performance, not whether councils are meeting their Care Act duties, but the former acts as a proxy for the latter.

We asked the Care Quality Commission to review the worst performers, and this has identified specific areas where councils and their NHS partners can improve. Some of that includes more robust implementation of Care Act duties, like market-shaping. A significant support offer is available to councils to help them improve, funded by the Department of Health and Social Care and NHS England and delivered by the Local Government Association.

I would like to thank you for sharing with me your Independent Living Strategy, which includes the principles of independent living and free support at the point of need, funded through taxation. We have noted the important contributions made by a number of recent reports, including those by the Institute for Public Policy Research, the Joint Select Committees, the Health Foundation, the King's Fund and the Resolution Foundation, and we welcome this contribution from Inclusion London.

On 25 June, the former Prime Minister launched a new drive to tackle barriers faced by disabled people. This included an initial focus on higher accessibility standards for new housing, an overhaul of statutory sick pay, and greater workplace support as part of renewed efforts to ensure disabled people can fully participate in society.

As part of this work, she also announced a new cross-Government disability team. Incorporating the Office for Disability Issues, the new team will sit alongside the Government Equalities Office and Race Disparity Unit in a new equalities hub at the heart of Government. This team will work closely with disabled people, disabled people's organisations and charities to develop a new approach to disability, with their views and experiences at the forefront of any new policy. Further measures will be set out later this year.

We recognise that there are real pressures in the care system, which is why we have taken steps to protect social care services.

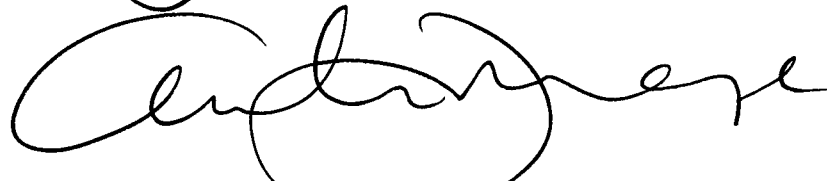
The latest Spending Round, announced by the Chancellor on 4 September, has set out the funding for adult social care services for 2020/21. We have committed to maintaining all £2.5billion of existing social care grants.

In addition to maintaining these existing grants, the Spending Round provides councils with an additional £1.5billion for adults' and children's social care for 2020/21. This comprises an additional £1billion of grant funding for adults' and children's social care.

The Government will consult on a two per cent precept that will enable councils to access a further £500million for adult social care.

This additional funding will support local authorities in meeting rising demand and will continue to help stabilise the social care system, which is a priority for this Government.

I hope this reply is helpful.

yours

CAROLINE DINENAGE