Introduction
A collection of documents relating to personalisation, transformation and resource allocation was launched in October 2009. This document is an overview of some of those for carers’ services.¹

For clarification of the terminology relating to personalisation, self-directed support and resource allocation, please refer to Making progress with Putting People First: Self-directed support.ii

The goal for local councils is for 30% of those receiving support to have self-directed support through a Direct Payment or personal budget in 2010-11 (and not ‘Individual Budget’ which was a term used for a pooled support budget in a previous pilot scheme). A rapid increase in the development and promotion of self-directed support in most areas is required in order to achieve this.

The policy changes do not alter existing community care and carers’ law.iii The Princess Royal Trust for Carers is working with ADASS and the Department of Health to address some gaps in this new guidance.

Resource Allocation Systems (RAS)
The Common Resource Allocation Framework (CRAF)iv is not statutory government guidance. It aims to clarify Resource Allocation Systems (RAS) which attempt to provide a method by which to calculate the sum of money required to arrange support, and therefore the size of personal budget. Most RAS use a points-based system; the cash figure generated being seen as “ballpark” to be adjusted according to individual needs (p10). Councils are advised to operate one transparent RAS for all groups of service users. There should not be cost ceilings imposed on the individual allocations generated; these should be directly related to individual needs. It is acceptable to adjust resource allocations according to differing actual unit costs of support for different client groups (p16).

The recommended lawful procedure for assessment for a resource allocation is to:

1. establish, through individual assessment, a person’s needs, focusing on those needs which are eligible for the authority to meet through adult services;
2. to identify which needs are being met sustainably, for example by a ‘willing and able’ carer);
3. to allocate resources to meet any eligible needs which are not otherwise being met.

NB. Carers also have separate rights. These are only partially explained by this new guidance. Under the Carers’ Acts of 1995 and 2004, carers have a right to a carer’s assessment to which local councils can ‘choose’ to respond with carers services or breaks. If, however, the carer is at ‘critical’ stage under Fair Access to Care guidance, then
an appropriate response is mandatory. The local council must take the carer’s assessment into account when establishing a care plan following a community care assessment. This element is omitted in these resources.

Two separate decision-making processes exist in resource allocation. Councils are advised not to attempt combining these into a one-stage process, but:

- to decide eligibility through an holistic assessment process against FACS criteria;
- to decide the resource allocation through a more focused self-directed assessment questionnaire with adjustments made where there are willing and able carers (p20).

According to the local council’s charging policy, the person’s financial situation could result in them being required to contribute some of the budget themselves. An indicative (tentative) resource allocation can be estimated at an early stage to aid planning, but this estimate may require revision as support options are further explored. The final agreed resource allocation must not then be cut without a new statutory assessment.

Councils are still encouraged to provide preventative and universal services, such as information for carers, for people who are not assessed as eligible for individual support. Many such services are commissioned through the third sector.

**Adjusting the resource allocation because the individual has a carer**

*Personalisation and the law: Implementing Putting People First in the current legal framework* reminds practitioners that “nobody is legally automatically obliged to care for their relatives or household members in this country” (p 9). However, a person who is “willing and able to care” can be regarded as a suitable means of meeting some or all of a person’s identified needs. It is, therefore, lawful to offer someone fewer resources if they have a willing and able carer as their unmet needs will be lower. “Carers’ assessments must therefore be offered, and done at or before the point of final resource allocation, if the system is to be seen as consistent with the current legal framework.”

If a carer is able, but unwilling to care, because they may wish to work instead for example, the person’s assessment and resource allocation should not be based on an unchecked assumption that currently observed levels of caring will continue. “The withdrawal of a carer’s willing support inevitably has implications for the cost-effectiveness of meeting the person’s needs in an independent setting” (p18). However, the guidance shows that this cannot be the only factor in a decision and is irrelevant if residential care is cheaper, but clearly cannot meet the person’s assessed eligible needs.

The CRAF guidance provides a mechanism by which the contribution of a carer can lead to an adjustment of a resource allocation, but only after “the situation of the informal [sic] carers
has been fully assessed and it is clear that they are able and willing to continue providing this support. The adjustment should take account of both the level of informal support being provided AND the impact on the informal carer” (p6). This should include “a full carer’s assessment (unless this is refused by the family)” (p6), which is a statement that needs clarifying, but one we take to mean “unless refused by the carer”. A separate assessment is needed, “as people sometimes assume that their family can continue providing support” (p19).

The adjustment to the resource that is made “needs to take into account two factors:

- How much informal support is actually being provided.
- The impact on family members and other informal carers of providing support.” (p19)

A Personal Needs Questionnaire is appended to the guidance, which includes some questions for carers to answer about the impact of caring. Of course, many carers prefer a private discussion about their views on the caring situation. Carers’ services should be involved in addressing how a process that allows for this is developed. The scoring system adjusts the resource allocation (reducing it by up to 100%), according to how much caring is provided and its impact on the carer. No downwards adjustment is made if the carer and assessor agree that caring “has a critical impact on my daily life and affects my health and well-being”. However, The Trust feels that some of these questions are out of line with FACS and require further guidance for practitioners to apply them fairly. Assessors should be clear that the caring impact questions in the personal questionnaire cannot replace the carer’s right to a carer’s assessment, nor a separate support plan for the carer.

Carers should not solely be seen as a resource, but, “the adjustment should take account of the ability and willingness of the family and other sources of informal support to continue providing support and the needs of family carers to have a life, including being able to work ...The council should check that the carer is willing and able to continue … and identify what support a carer may need to continue in their caring role. Where there is more than one informal carer, it may be necessary to carry out more than one carer’s assessment” (p19). The Trust feels that this section does not say enough about exploring carers’ choices and needs in line with the holistic approach established by carers’ legislation and the National Strategy. A large gap in this guidance is recognition. Often the best way of promoting the carers’ independence and well-being is through a better or more carer-friendly support package to the person being cared for. It is noted that carers can benefit from a range of “universal” support including “information, advice and guidance via a carer’s centre, a paid expert carers’ group, and easier access to ‘paid-for’ services – such as gardening, decorating and home maintenance” and that it is important to make support available “when the ‘cared-for’ person is not eligible for support” (p20).
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Councils are advised not to attempt to devise a RAS for carers, which may well be sensible provided that they can agree a mechanism for providing carers’ services and Direct Payments under the Carers and Disabled Children Act 2000. Councils are also advised to continue providing carers with advice, information and support, including in the form of Direct Payments which “can be non means-tested and available in situations where a person does not meet the council’s eligibility criteria. The aim of this support is to make sustainable the contribution of an informal carer to the support needs of a disabled person.” This is helpful, because it makes sense to support most unpaid caring contributions, not just those in crisis. Less helpfully, the guidance appears to confuse not devising a carers’ RAS with not offering carers personal budgets: “At this stage there is no policy requirement to extend personal budgets to include support for carers. Funding for support to carers needs not be included in developing a RAS.” The first sentence of this quote is contrary to government guidance. We suspect this is not intentional and we will be seeking urgent clarification.

Young carers and disabled parents

Consideration of young carers is disappointingly absent from the guidance, but the personal questionnaire (see above) does have a section on the person’s need for support as a parent. The Putting People First commitment that no parent should have to rely on their children for inappropriate levels of care is omitted.

N.B. All references from hereon are to Personalisation and the law

Self-assessment is not lawful

Self-assessment ‘per se’ is not lawful; but ‘self-directed’ assessment (with appropriate support on offer) is lawful. Similarly, councils can ‘contract-in’ support for clients to establish needs and participate in those processes, but cannot ‘contract out’ assessment, resource allocation or support planning: “The decision as to the outcome of that assessment has to be a decision taken by a local authority employed member of staff” (p18). This person must be competent, i.e. an experienced social worker, not an administrative staff member. Decisions on eligibility and the finalisation of support plans must be carried out in-house (p25). These rules also apply to carers’ assessments. vi Note that a Self-Directed Support assessment does not count as a Community Care assessment, unless it covers all of the community care domains required by law, so people should usually be offered both to ensure that all of their housing adaptation, transport, leisure, respite etc needs were assessed, not just those for which personal budgets are offered.

First-contact screening and signposting services, which give individuals an early indication of the likelihood of a full community care assessment being useful to them and the likelihood that they might be charged for services, are legal and desirable, providing staff are trained to recognise signs that enquirers may lack capacity to present a clear picture or make an informed choice without a full, supported assessment.

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www.carers.org / www.carers.org/professionals
The guidance has a useful appendix summarising the key points of current law related to the duty to assess people for community care, including the strict restrictions on excluding people from assessment, the ban on assessing financial status ahead of assessing needs, the ban on putting a ceiling on the price of responses to particular levels of need, and the absolute duty to meet assessed eligible need (shortfalls in a council’s resources are only relevant when there is a choice of reasonable care packages, in which case councils can choose the cheaper).

Carers receiving payment for care
The guidance notes that councils currently get round the ban on paying relatives for care, through making an ‘indirect payment’ to a family or the trustees of a person’s finances, as if such people were ‘voluntary organisations’ under the National Assistance Act 1948. This is regarded as being of “dubious” legality and it is suggested that such arrangements are brought into line with the new provision for carers to take on Direct Payment that have just come into force. Carers may find themselves as both employer and employee which the guidance notes will present obvious difficulties.

Part of the guidance on this is rather unhelpfully phrased: “Receiving payment in return for work also means that at some indefinable point, the individual doing the work ceases to count as a carer, for the purposes of carers’ legislation, because carers are people who do not get paid for their care, and they have to do a substantial amount of care, unpaid, for the person, before they count as a carer”, (p14). This does not mean that a person cannot be classed as a carer as soon as they take any payment, just that they must still be carrying out regular and substantial unpaid care alongside their paid care. The point at which this ceases to be the case is no more “indefinable” than for other groups of carers. The guidance goes on to note that “young carers can only do a certain amount of paid work before losing their status as students”.

New roles for carers managing Direct Payments
Local authorities are now obliged to offer Direct Payments as an option (they cannot be compulsory) to nearly everyone, including those who lack capacity, under The Health and Social Care Act 2008. The only exceptions are people subject to some substance misuse related criminal sanctions and some people with mental health problems who are conditionally discharged from hospital or for whom a certain treatment is compulsory. The payment amount must be a reasonable estimate of the cost of procuring the support services lawfully. Authorities can impose conditions, such as naming specific persons to whom the money must not be paid, but should not insist on Criminal Record Bureau checks as this is the client’s decision. There are several ways of offering payments, with varying degrees of client and local authority responsibility for spending them (p22).
The new Act means that relatives or friends can present themselves as a fitting third party to manage the client’s package. Councils must develop a clear policy on how to judge the suitability of third parties (p8). The third party is legally accountable for ensuring the money is spent in line with the care plan. Councils will give third parties the whole (‘gross’) allocated budget and then attempt to recoup any charges from the client (or their estate after death), rather than give third parties the net amount (with charges subtracted). This is to avoid third parties, many of whom will not be able to access their relatives’ bank accounts, being left short of the resources needed to fund the care plan (p28).

Previous guidance on *Independence, choice and risk: a guide to best practice in supported decision making* proposed that councils, PCTs and their partners establish a joint policy that set out how promoting choice and managing risks should be approached by practitioners. This stated that “carers’ needs and wishes (including young carers) are important too, and any conflict of wishes should aim to support the rights of all involved” (p15). Risks to carers and carers’ views on risks to their family members should be considered (p25 and p32-3). It may be helpful to ask to see your local area’s joint independence, choice and risk policy.

**Prevention and pre-assessment screening**
Councils can provide preventative services for people who fall below their eligibility thresholds, either by amending their eligibility criteria or through contracting or grant-funding third sector services which are universally available.

In self-directed support systems, councils retain ultimate responsibility for resource allocation and a duty of care to all social care clients. Councils should retain “backstop” services for those whose needs cannot be met through personalised approaches.

Source documents can be found at:  
www.adass.org.uk/index.php?option=com_content&view=article&id=328
For more information, please contact Alex Fox, Head of Policy and Communications, The Princess Royal Trust for Carers at afox@carers.org or 0113 268 8817.

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i For further information, see TrustNet, Policy and Parliamentary Affairs: Guidance: Oversight and scrutiny committees November 2009; Trust Guidance: how to help councils use their resources better November 2009.

ii LGA, I&DeA and ADASS, October 2009

iii Professor Luke Clements, Carers and their Rights (3rd Ed) available at www.carersuk.org

iv ADASS, October 2009

v ADASS, October 2009

vi For further information, TrustNet, Policy and Parliamentary Affairs: Guidance: Carers’ Assessments


viii See A summary of changes to Direct Payments (Department of Health, November 2009) at www.dhcarenetworks.org.uk/Personalisation/Topics/Browse/DirectPayments/DPExtension


Department of Health, May 2007