


Carers and the Social Services and Well-being (Wales) Act 2014

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Definitions (sections 2 - 4)

People who need care and support

- ie disabled / older adults etc

Eligibility criteria require that the needs arise:


- from physical or mental ill-health, age, disability, dependence on alcohol or drugs,;

Disabled child

- same meaning as in Equality Act 2010 s6

Carer

- a person who provides or intends to provide care for an adult or disabled child (but is not paid to do so)




Well-being ~ section 2

- physical and mental health and emotional well-being;
- protection from abuse and neglect;
- education, training or recreation;
- domestic, family and personal relationships;
- contribution made to society;
- securing rights and entitlements;
- social and economic well-being;
- suitability of living accommodation.

for adults


- control over day to day life;
- participation in work

 **Well-being ~ section 6**

LA must have regard to—

- the individual's views, wishes and feelings,
- promoting and respecting the dignity of the individual,
- the characteristics, culture and beliefs of the individual (including, for example, language), and
- the importance of support to enable the individual to participate in decisions....

- for adults
- the presumption that they are best placed to judge their well-being, and
- the importance of promoting independence if possible


 **Independent living**

Section 6(3)(b)

- 'the importance of promoting the adult's independence where possible'.

Part 2 Code


- the well-being duty 'includes key aspects of independent living as expressed in the UN Convention on the Rights of Disabled People [CRDP], in particular, Article 19.'

 **Independent living**

Quality Standard 1 of the Code of practice in relation to measuring social services performance

'in the exercise of their social services functions local authorities must


- have regard to a person's individual circumstances and the UN convention on the rights of children and the UN principles for older people and the UN convention on the rights of disabled people (p9)

 **section 19 / 21**

Assessment of adults and children

Specific duty

- 'on the appearance of need'
- is 'carer blind'


 **section 24**

Carers' assessments

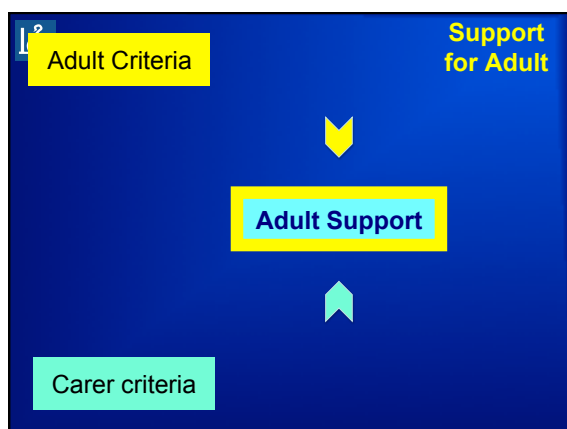
No longer a requirement to:

- Provide 'regular & substantial' care;
- To 'request' the assessment;

Now a **'duty'** to meet carer's 'Eligible Needs'

 **Assessment duty - general**

- Triggered by the 'appearance of need' – ie to anyone working for local authority;
- Includes future need (eg hospital discharge);
- Finances are irrelevant – assessment of needs precedes assessment of finances;
- Level of need is irrelevant;
- To any adult ordinary resident / within area (or the carer of any such adult);
- Refusal of assessment.



Definitions (sections 2 - 4)

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Eligibility
4 stage process

 **Eligibility Regulations 2015 ~ Stage 1**

Adults:

- The need is due to physical or mental ill-health, age, disability, dependence on alcohol or drugs ...;

Carers:

- The need arises as a result of providing care for either an adult in need or a disabled child

 **Eligibility Regulations 2015 ~ Stage 2**

The need relates to one or more of these outcomes:


- (a) ability to carry out basic self-care or domestic routines;
- (b) protection from abuse or neglect;
- (c) involvement in work, education, learning, leisure ...;
- (d) maintaining family / significant personal relationships;
- (e) development & maintenance of social relationships and involvement in the community;

in the case of an adult

- fulfilment of caring responsibilities for a child;

in the case of a child

- achieving developmental goals


 **Eligibility Regulations 2015 ~ Stage 2**

basic self-care ~ tasks part of normal daily life including—

- (i) eating and drinking;
- (ii) maintaining personal hygiene;
- (iii) getting up and getting dressed;
- (iv) moving around the home;
- (v) preparing meals;
- (vi) keeping the home clean, safe and hygienic

Additional ground for carers

- (vii) fulfilment of caring responsibilities for a child;


 **Eligibility Regulations 2015 ~ Stage 3**

The adult is not able to meet that need, either—

- (i) alone,
- (ii) with the support of others willing to provide;
- (iii) with the assistance of services in the community to which the adult has access.

'not able' to do something if it:

- causes significant pain, anxiety or distress
- endangers health or safety of the person or another
- takes that person significantly longer than would normally be expected


 **Carers: the 'can & can only test'**

Carers could be advised to:

state that they are not able (and therefore not willing) to provide care unless the LA first determines that the individual is eligible.

Then, and only then, will they be able (and therefore willing) to discuss the nature and extent of the care (if any) they might be willing to provide.


As noted below, carer ability and willingness must be recorded explicitly

 **Eligibility Regulations 2015 ~ Stage 4**

The need is such that the adult / carer is unlikely to achieve one or more of their personal outcomes unless—


- the LA arranges their care/ support (or provides DPs)


Is this really a 4th ground?

 **Eligibility Summary**

Adults / carers

1. Need due to impairment or caring
2. Means you can't do one key activity
3. This need is not able to be met except with social services help

 **Case studies**

 **'is unlikely to achieve ... unless'**


Ombudsman

- Adult with complex mental health difficulties receiving support. Re-assessment found it would take significantly longer than would generally be expected to achieve outcomes associated with work, accessing community services, maintaining hygiene, and maintaining a home environment due to her mental health conditions.

Ombudsman decision

- Maladministration ~ assessment provides no explanation why her wellbeing was not significantly impacted by her difficulties to achieve the specified outcomes.

Complaint against Milton Keynes Council 20/9/16


 **Nutrition ~ eating / preparing**

Code 4 Annex 1 p35

Adult who is blind and needs 'to develop mobility, communication and life skills (e.g. meal preparation) from a rehabilitation officer. He may also need specialist equipment.

Where each of these can be provided by community based services - supporting [his] capacity to self-care - then [he] will not be regarded as having eligible needs.


Should any of these services not be available or be insufficient to help [him] to meet his personal outcomes, then that need will become an eligible need and services will be provided through a care and support plan.

 **Nutrition ~ eating / preparing**

A blind person.

She said she needed help to (among other things) check the contents of her fridge; read cooking instructions; and have an escort to help her on occasional shop trips.


In the council's opinion although the need relates to eating / preparing meals this could be addressed by use of long-life foods, her freezer, and ready meals.

 **Nutrition ~ eating / preparing**

Ombudsman


Maladministration for a LA to fail to recognise that 'fresh food is essential to meet nutritional needs' and that 'consumption of fresh food once it has started to perish carries a significant health risk'

Complaint ~ Hammersmith & Fulham 21 July 2016.

 **maintaining personal hygiene**

Adult unable to manage getting in or out of her bath

OT decides no need for a level access shower as she is able to maintain her hygiene by strip washing at the sink.


 **maintaining personal hygiene**

- LGO in finding maladministration referred to the DFG duty 'facilitating access by the disabled occupant to, or providing for the disabled occupant, a room in which there is a WC, bath or shower (or both), or facilitating the use by the disabled occupant of such a facility'.

2016 ombudsman report ~ Birmingham CC

... the right to bathe with dignity is 'the entitlement of everybody'


2003 ombudsman report ~ Bolsover DC

 **Getting dressed**

A blind person.

She said she needed help to (among other things) sort clothes, so she did not wear stained or inappropriate clothing


In the council's opinion although the need related to dressing this was not a dressing outcome that was sufficiently significant for it to be eligible.

 **Getting dressed**

Ombudsman


Maladministration for a LA to fail to recognise the importance to an adult's personal dignity of wearing clean, presentable and appropriate clothes

Complaint ~ Hammersmith & Fulham 21 July 2016.

 **Getting dressed**


Regs specify 'getting up and getting dressed'
What about going to bed and undressing?
2016 ombudsman report (Dorset CC)

- Although the assessment recorded a need for help with dressing no support made for an evening visit to help undress.
- It is logical to expect a person who needs assistance with dressing to need assistance with undressing. Being appropriately dressed for bed is equally as important as being dressed in day clothes

 **Keeping the home clean safe & hygienic**

Adult with Multiple Sclerosis along with other health conditions. He has mobility difficulties and is an essential wheelchair user. He uses a walking stick to mobilise inside his home. He is below the capital threshold.
'Needs' domestic assistance.

Social services advise that 'we no longer fund domestic work generally' and that he was not eligible because he could afford a cleaner: that the ... Act was "about what people can do for themselves".


 **Keeping the home clean safe & hygienic**

2016 ombudsman report (Dorset CC)


- In finding maladministration the LGO held that the adult had an eligible need. Therefore he was entitled to receive such a service.

2016 ombudsman report (Milton Keynes)

- The Council said that it considered Mr B's could meet this need informally. But I found no evidence to support that conclusion

 **“What if”**

- What will happen if care and support is not available?
- The greater the risk to the person's well-being the greater the onus is on the LA to meet that need – or to give cogent reasons as to why this is not necessary.
- Well-being includes physical, mental, social and emotional well-being as well as the ability to engage in employment, education, training, leisure and social activities.

 **Section 34**

Range of care and support for individuals in need

- a) accommodation in a care home, children's home or in premises of some other type;
- b) care and support at home or in the community;
- c) services, goods and facilities;
- d) information and advice.
- e) counselling and advocacy;
- f) social work;
- g) payments (including direct payments);
- h) aids and adaptations;
- i) occupational therapy.

12 "how, who, what & when"

What the assessed need are
How the need is to be met

- the level & frequency of the help that is to be provided;
- who is going to provide it;
- which agency is responsible for what service;
- what the objectives of are providing help(outcomes);
- when is the care being provided (times / days / dates);
- what the carers are willing to do;
- who is the coordinator and their contact number;
- who to contact in emergencies;
- what the contingency plan is if things go wrong;
- who is monitoring the plan;
- When the review is to happen.

12 Copies of assessments and care plans

The individual / their authorised representative and /or parents must be given a copy of:


- their assessment
Assessment Regs 2015 reg 6
- all elements of the assessment and eligibility as well as their care and support plan
Part 4 Code paras 24 and 95.

12 Duty to provide care & support adults

Section 35 ~ support for adults in need


Duty to provide applies where:

- Individual is ordinarily resident in LA area; and
- Individual has eligible needs: and
 - Individual's finances below maximum allowance; or
 - Individual's finances above maximum allowance and they ask the LA to provide

 **Duty to provide care & support for carers**


Section 40 - 45
Complexities concerning duties to meet needs of carers:

- of adults
- of disabled children;
- who are Young Carers

 **Reviews and reassessment**

Adult with dementia and other medical needs & lives with his wife in their own home. She is his informal carer and is 80 years old.
Council assessed that he had social care needs, and she had needs as a carer. In 2015, he received a care package of:


- five weeks per year respite in specialist dementia care home,
- three days per week attendance at a day centre,
- 1 hour per week help with personal care.

 **Reviews and reassessment**

The social worker considered that he met the criteria – that:

- support for family members had allowed him to live safely at home.
- due to the stress experienced by his wife there is a risk of breakdown in the caring role, things have become difficult for her to manage.


Advised a need for 6 weeks respite, plus an additional day at the day centre.
The Practice Review Group agreed an additional day at the day centre, but reduced the respite care to 4 weeks.

 **Reviews and reassessment**

Ombudsman held:
Local authorities must not assume a carer is willing or able to provide any care – including additional care arising from a reduction in the care package


- maladministration for such a reduction to occur without assessing the carer ; and
- explicitly clarifying (and recording) whether she/he is 'able and willing' to provide the additional care.

Complaint against Bromley LBC 7th Sep 2016

 **Care plan changes**

Ombudsman:
The Council said that it considered Mr B's could meet this need informally. But I found no evidence to support that conclusion


Complaint against Milton Keynes 14 November 2016

 **Funding panels**

A panel rejected an assessor's identification of the adult having eligible needs:


- I am not persuaded that this panel was purely looking at compliance with the Care Act and cost effectiveness. If this was its remit, it failed to do this adequately. It is possible Miss X's needs could be met in other ways but with proper care and support planning in consultation with Miss X. Not through a decision in direct contravention of the care manager's recommendations by a panel who was not involved in the assessment.

Complaint. 15 017 591 Brighton & Hove CC 30/8/16.

 **Funding panels**


Reports from assessors that are required to go to a 'panel' must include a recommendation from the assessor as to her or his professional opinion as to what care is required.

Complaint 15 020 384 London Borough of Bromley 7/9/16

 **Respite / short breaks**

Section 34(1)

- LAs may / must meet the needs of people assessed as eligible (ie carers or disabled people)
- The need may be met directly or by providing support to another person


 **Respite / short breaks**

Section 34(2)

Needs can be met in many ways – eg:


- (a) accommodation in a care home, children's home or premises of some other type;
- (b) care and support at home or in the community;
- (g) direct payments.

ie covers a sitting service /night sitting service, day centre /after-school (or summer holiday) club.

 **Respite / short breaks**

The duty to meet the needs is non resource-dependent.

- ie if the assessment identifies a need for (say) 10 hours of sitting services a week, or of one weekend a month for the child to be accommodated away from the home – then this need must be met precisely and it is not something that the LA can 'trim' because it has to make cut backs due to resource shortages.

 **Respite / short breaks**

A 2016 ombudsman report

Adult with LD who lived with his parents. His care package had for many years included 50 days of replacement care to enable his parents to have a break.

On review this was reduced to 14 days although his needs had not changed and the sustainability of his parents in maintaining their support was recorded as at risk.


In finding maladministration the ombudsman held that the LA had to provide an explanation as to the reasons for the reduction: that it 'needs to show what circumstances have changed to warrant this reduction in respite provision'.


 **Respite / short breaks**

It was not acceptable for the council to state that it would offer emergency respite if the need arose:


- The parent's need for 'weekends away and a little social life are not emergencies but part of a planned sustainable support regime'.
- The Council's assessment does not address these sustainability issues ... the impact on the carers' daily lives and non caring activities must be included.

Complaint against Sefton MBC 23 Aug 16.


 **Young carers**


 **Young carers**

- The 2014 Act does not distinguish between the rights of adult carers and those of young carers
- LAs must, seek to identify the outcomes that YCs wish to achieve (s24(4)(d)) 'to the extent' that it is 'appropriate having regard to the carer's age and understanding', as well as their parents views on this and their well-being generally (s24(4)(d)).
- A YCs assessments must also pay particular regard to the developmental needs of the child, and whether it is appropriate for the child to be providing the care at all (s24(5)(c)).

 **Young carers**


- As with the assessment duty owed to disabled children, (s21(6)) the way a carer's assessment is undertaken should be 'proportionate in the circumstances' (s24(7)).
- Proportionality goes to the scope and depth of an assessment – and not (of course) to the question of whether one is undertaken: the duty to assess (where a need may exist) is obligatory.

 **Parent carers**

 **Parent carers**


s24 places a duty on the LA to assess:
When a carer is providing support for an adult or disabled child who is based in the LA area;
The assessment must consider

- Whether carer has a need for support; and
- what those needs are.
- **a disabled child is presumed to need care in addition to, or instead of, the care and support provided by the child's family (s24(7)).**

 **Parent carers**


s24 states clearly that the LA must:

- assess the extent to which the carer is able / will continue to be able, to provide care;
- assess the extent to which the carer is willing, and will continue to be willing, to do so;
- presume that a disabled child is in need of care in addition to, or instead of, the care and support provided by the child's family.

 **Parent carers**


The Eligibility regs (reg 4) stipulate that a disabled child is only eligible for care / support if their need cannot be met by (among others):

- The child's parents nor other persons in a parental role' are able to meet, either—
- This is problematic as it does not stipulate that the carer must be 'willing' (contradicting g s24 of the Act)

 **Parent carers**


The Eligibility regs (reg 5) are equally problematic in relation to the needs of a carer for support – stipulating that eligibility only arises if:

- the carer is unable to meet the need (i) alone; (ii) with the support of others who are willing to provide that support; or (iii) with the assistance of services in the community to which the carer has access;
- again it fails to mention that a carer must also be 'willing' - contradicting s24 of the Act.

 **Direct Payments**

Sections 50 – 53


- The Care and Support (Direct Payments) (Wales) Regulations 2015 contain the detail
- DPs can now be used to purchase care and support ... from any person (including, among others, the authority which made the payment).
- purchase residential care (unlike in England)

 **Advocacy**

LAs must ensure


- 'services which provide assistance (by way of representation or otherwise) to persons for purposes relating to their care and support' (section 181(2)).

Right only arises if no 'appropriate individual'


 **Advocacy ss 181 - 183**

Part 10 Code of Practice (Advocacy)

- LAs must arrange for the provision of an independent professional advocate when a person can only overcome the barrier(s) to participate fully in the assessment, care and support planning, review and safeguarding processes with assistance from an appropriate individual, but there is no appropriate individual available; (para 47)
- Advocacy supports and enables people who have difficulty representing their interests, to exercise their rights, express their views, explore and make informed choices. (para 27)


 **Appropriate individual (Code 10 13.63)**

Appropriate individuals are expected to support, represent and to facilitate the individual's involvement in securing their well-being outcomes. Whilst often this will be a family member, friend or someone in the wider support network it is likely that some people may not find it that easy to fulfil this role.

 **Appropriate individual** (Code 10 13.63)

For instance, a family member who lives at a distance and who only has occasional contact with the person; a spouse who also finds it difficult to understand the local authority processes; a friend who expresses strong opinions of their own prior to finding out those of the individual concerned. It is not sufficient to know the person well.

The role of the appropriate individual is to support the individual's full engagement and participation in determining their well-being outcomes.


 **Duty to consider advocacy**

Duty to consider the need for an advocate arises in a wide range of situations including:

- the provision of information and preventative services;
- assessments of need, care planning, meeting needs,
- direct payments,
- portability of support,
- reviews,
- safeguarding of property

Code 10 13.50

 **Carers and human rights law**

 **'Focusing on women caregivers'**

'it is hard to think of a human right that is not potentially affected in some way by the unequal distribution and difficulty of unpaid care work' (para 27)

Magdalena Carmona,
UN General Assembly's Special Rapporteur on extreme poverty and human rights
'Focusing on women caregivers' A/68/293 (UN, 2013)
