

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

Luke Clements

[www.lukeclements.com](http://www.lukeclements.com)

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# Resources

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## Headline rights

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## Key rights

### Carers rights

- Carers of all ages and no longer a need to be providing 'substantial and regular care'

### Assessments

- the right to be assessed without having to ask

### A decision on what support is needed

- without delay

### A duty to meet 'eligible needs'

- Previously only a 'discretion'

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## The importance of evidence / onuses

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### Evidence / onuses

**Well-being** – presumption that that the adult is best placed to judge their well-being (s6(3));

**Disabled child** - a presumption that they have needs for additional / substitute care and support (s21(7));

**Reviews** – if they result in a reassessment – there is a need for evidence as to what this was;

**Reductions in support** – evidence that the carer is prepared to undertake the additional caring that results

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#### Social Services & Well-being (Wales) Act 2014

##### Section 5 Well-being duty

A person exercising functions under this Act must seek to promote the well-being of—

- (a) people who need care and support, and
- (b) **carers** who need support.

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### Duty to promote well-being

section 5

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### 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

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### 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

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### Duty to assess

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### section 19 / 21

#### Assessment of adults and children

Specific duty

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

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### 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'

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#### 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.

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**Definitions (sections 2 - 4)**

**People who need care and support**

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)

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**Eligibility**

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**Eligibility “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.

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**Eligibility Criteria**  
Social Services & Well-being (Wales) Act 2014

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**Eligibility Summary**

**Adults / carers**

1. The need is due to an impairment or to caring;
2. As a result of this you can't do a key activity;
3. This need is not able to be met except with social services help/

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**Eligibility Regulations 2015 ~ Stage **

**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

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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

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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;

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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.

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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

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Carers: the 'can & can only test' **3**

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

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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 4<sup>th</sup> ground?

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## Examples

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### 'services in the community to which the adult has access'

#### Where does the onus lie?

Is it the LA that has to identify suitable available options or

Does the individual have to show that they have tried various options and these have not worked?

#### Code Part 4

32. The eligibility criteria must not be used as a tool to require individuals to demonstrate they have exhausted every other possible avenue of support before becoming eligible for local authority assistance.

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### Where does the onus lie?

#### 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.
- Local authority then stated that the difficulties did not significantly impact her wellbeing.

#### • Where is their evidence for this finding ?

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### 'is unlikely to achieve ... unless'

- 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

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### Nutrition ~ eating / preparing

Example in Code 4 Annex 1 p35

A blind adult who needs

1. mobility, communication and life skills (e.g. meal preparation) from a rehabilitation officer. ... .
2. needs 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.

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### Nutrition ~ eating / preparing

Ombudsman Case

A blind person who considered that she needed help to check the contents of her fridge; read cooking instructions; and have an escort to help her on occasional shop trips.

#### Assessment duty triggered

1. Need due to impairment or caring
2. Means you can't do one key activity
3. This need cannot be met by assistance to which the person has access

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### Nutrition ~ eating / preparing

#### Needs

1. help to check the contents of her fridge;
2. read cooking instructions; and
3. 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.

3. Is this sufficient to help her meet her personal outcomes?

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### 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;

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### 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

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### 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

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### 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.

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### Getting dressed

A blind person considered that she needed help to 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.

3. Is this sufficient to help her meet her personal outcomes?

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### Eligibility Regulations 2015 ~ Stage 2

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

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- 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

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### 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.

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## Care & Support Plans

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### Care & Support Planning The “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.

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### 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.

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## Reviews & reassessment

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### Reviews and reassessment

Adult with dementia lives with his wife in their own home. She is his informal carer and is 80 years old. In 2015 the assessment was that he had social care needs, and she had needs as a carer.

A care package included:

- 5 weeks a year respite in specialist dementia care home,

On review

Social Worker: noted the stress experienced by his wife and the risk of breakdown in the caring role.

- Advised: 6 weeks respite.

Panel:

- Decided 4 weeks respite.

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### 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 7<sup>th</sup> Sep 2016

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### 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.

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### 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

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### 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

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**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.

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**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.

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**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'.

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### 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.

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### Young carers

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### Young carers

Section 42 places a duty on LAs to meet the needs of young carers (termed 'child carers') if the person for whom they care is based in the LA area and the YC meets the standard carers' eligibility criteria.

However if the YC's needs are addressed by providing additional support to the person for whom they care, then the duty only arises if additionally that person satisfies the financial eligibility rules (s42(4)) and (overly complex) mental capacity criteria (s43).

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### Young carers

The eligibility criteria [1] require that:

- (a) the YC's needs arise from their caring role;
- (b) that the need relates to one of the standard list (ie ability to carry out self-care or domestic routines; protection from abuse or neglect; involvement in work, education, learning etc) but an additional specific YC criteria – namely 'achieving developmental goals'; and
- (c) the need cannot be met by the YC alone or with the support of others who are willing to provide that support; or 'with the assistance of services in the community to which the carer has access'.

[1] The Care and Support (Eligibility) (Wales) Regulations 2015

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### 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)).

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### 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.

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### Young carers

- The assessment ... must have regard to whether the carer works or wishes to work and whether they are participating or wish to participate in education, training or leisure activities.
- [for YCs] the assessment must have regard to his or her developmental needs and the extent to which it is appropriate for the child to provide the care.
- This should lead to consideration by the LA of whether [the YC] is actually a child with care and support needs ... who ... should be assessed under s21.

Part 3 Code p7 and Part 4 Code para 50.

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### Parent carers

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### 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)).

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**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.

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**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)

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**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.

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## 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)

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## 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'

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## 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.

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**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.

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