



Luke Clements Training

Assessing Eligibility

Social Services & Well-being (Wales) Act 2014

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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,

**High functioning ASD?
Asperger's?
ADHD?**

Definitions (sections 2 - 4)

Carer

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

Definitions (sections 2 - 4)

Does this exclude a family carer paid using direct payments?

- Care and Support (Direct Payments) (Wales) Regulations 2015 reg 6 (if necessary);

Does this include carer visiting relative in care home?

Hurley v. Secretary of State for Work and Pensions (2015)
Secretary of state confirmed that carers services under the Care Act 2014 could include help with fares when travelling to the recipient of the care'.

Well-being ~ s2 (outcomes)

- 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

What does independent mean?

Code 3 para 11

At the core of this is a conversation about promoting independence and development by maximising people’s control over their day to day lives ...

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)

CRPD Article 19

Recognises the right to live in the community with choices equal to others ... [states] to facilitate full inclusion / participation including:

- a) choice of place and type of residence
- b) range of domiciliary support services
- c) general services also available

Human rights decisions

R (Gorry) v. Birmingham City Council (2012)

- Bedroom tax disabled children [ASD]

R (Bracking) v. SS DWP (2013)

- Closure of ILF

R (Mathieson) v Sec State Work & Pensions (2015)

- Loss of DLA in hospital

R (Hurley) v Sec State Work & Pensions (2015)

- Benefits cap and carers

R (Carmichael) v Sec State Work & Pensions (2016)

- Bedroom tax and disabled adults [spina bifida]

Preventative services ~ s15

Duty to secure preventative services – ie to:

- Prevent / delay the development of people's needs for care and support;
- minimise the effect on disabled people of their disabilities;
- promote the upbringing of children by their families

Can identifying preventative services halt an assessment?



section 19

Assessment of adults

- (1) Where it appears to a LA that an adult may have needs for care and support, the authority must assess—
 - (a) whether the adult does have needs for care and support, and
 - (b) if the adult does, what those needs are.
- ...
- (3) The duty applies regardless of the LA view of—
 - (a) the level of the adult's needs for care / support, or
 - (b) the level of the adult's financial resources.

section 19

Assessment of adults

Specific duty

- 'on the appearance of need'

Code Part 3 para 20

- Under this service it is only the provision of information that does not require some sort of assessment. If advice and/or assistance are given an assessment of a person's needs will have taken place.

Is this correct?

- Not what the person wants but what 'appears' to the LA
- How strong is the front door policy?

section 24

Carers' assessments

Appearance of need.

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.

Eligibility

4 stage process

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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

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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;

Bristol CC v. S (2015)
 Care proceedings (mother a disabled person)
 'There appears to be a profound lack of knowledge of the responsibilities that arise under the Care Act 2014'

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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; ← **How clean?**
- (iii) getting up and getting dressed; ← **How smart?**
- (iv) moving around the home;
- (v) preparing meals; ← **Cordon bleu?**
- (vi) keeping the home clean, safe and hygienic

Additional ground for carers

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

**Is there a 'good enough' ground (clean / smart enough)?
 If so who decides what is 'good enough'?**

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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

Lack of Training

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)

Section 2 (well-being outcomes)

physical /mental health well-being;	protection from abuse and neglect;
education, training or recreation;	personal relationships;
contribution to society;	securing rights & entitlements;
social & economic well-being;	suitability of living accommodation.
control over day to day life;	participation in work.

Lack of Training

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 an additional 4th ground?
 Will there ever be a case where a failure in the 3rd ground would not require a duty to provide under ground 4?

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

The onus lies with:

Individual	✓	✗
Local authority	✓	✗

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‘services in the community to which the adult has access’

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.
- It then stated that the difficulties did not significantly impact her wellbeing.

Ombudsman decision?

Having found that it does take her significantly longer to do these basic activities -

Does she have to show it would be significant?

or

Does the local authority have to justify that it is not significant?

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.

Well-being is the lens through which eligibility / sufficiency is to be viewed.

Well-being principles
Maladministration to impose restrictive interpretations of outcomes that fail to take proper account of individual well-being

Complaint ~ Hammersmith & Fulham 21 July 2016 para 25.

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.

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

Ombudsman decision?

Applying the Eligibility Criteria by specific reference to the well-being criteria what would the Ombudsman decide ??

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.

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

Ombudsman decision?

Applying the Eligibility Criteria by specific reference to the well-being criteria what would the Ombudsman decide ??

Statutory needs

R (McDonald) v Kensington & Chelsea (2011)

Is it 'game over' for the 'needs v. wants' game?

Regulations spell out what 'needs' are:

- ability to carry out self-care or domestic routines (reg 3)
- self-care means (reg 1)
- (ii) maintaining personal hygiene;
... ..
- (vi) keeping the home clean, safe and hygiene

DFG legislation

- facilitating access ... a lavatory, or facilitating the use by the disabled occupant of such a facility;

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.

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

Ombudsman decision?

Applying the Eligibility Criteria by specific reference to the well-being criteria what would the Ombudsman decide ??

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

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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".

3. Is this sufficient to help him meet his personal outcomes?

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Keeping the home clean safe & hygienic

Adult assessed as having eligible needs for support with showering, washing her hair and dressing.

Her need for house-cleaning rejected on the basis that she should pay for this using her attendance allowance.

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Ombudsman decision?

Applying the Eligibility Criteria by specific reference to the well-being criteria what would the Ombudsman decide ??

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Keeping the home clean safe & hygienic

Adult assessed as having eligible needs for support with showering, washing her hair and dressing.
Her need for house-cleaning rejected on the basis that she should pay for this using her attendance allowance.

2. Is this ineligible because she can do this key activity?

3. Is this ineligible because this response is sufficient to help her meet her personal outcomes?

4. Is this ineligible because the need does not require social services intervention?

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DLA & provision

DoH guidance" LAC (DH) (2012)03 noted that:
some local authorities were taking the mobility component into account when considering what social services to be provide

... councils have a duty to assess the needs of any person ... for whom the authority may provide ... community care services They have a further duty to decide, ... what, if any, services they should provide to meet the individual's needs.

This duty does not change because a particular individual is receiving the mobility component of DLA

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DLA & provision

Code 4 charging

5.3 Assessment of need precedes charging decision

2.13 Any income from the following benefits should be taken fully or partially into account when considering what a person can afford to pay towards the cost of their care and support: ...

- (d) Disability Living Allowance (Care component);

Summarising Eligibility

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

OK

Eligibility Regulations 2015 ~ Stage 2

The need relates to one or more of these outcomes:

- ability to carry out basic self-care or domestic routines;
 - protection from abuse or neglect;
 - involvement in work, education, learning, leisure ...;
 - maintaining family / significant personal relationships;
 - development & maintenance of social relationships and involvement in the community;
- fulfilment of caring responsibilities for a child;


OK

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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

to the extent that that it has a significant impact on well-being

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 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)

Section 2 (well-being outcomes)

physical /mental health well-being;	protection from abuse and neglect;
education, training or recreation;	personal relationships;
contribution to society;	securing rights & entitlements;
social & economic well-being;	suitability of living accommodation.
control over day to day life;	participation in work.



Care Planning and meeting needs

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.

Care & Support Planning

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.

Care & Support Plans ~ meeting needs

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- A 2016 ombudsman report concerned a young man with Down's Syndrome assessed as having substantial needs including an outcomes to form 'peer group relationships' and prevent isolation.
- A suitable supported housing placement identified which had a resident of a similar age.
- LA withdrew this having found a cheaper placement but this was occupied by older people.

Ombudsman decision?

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Applying care planning principles and the well-being criteria what would the Ombudsman decision ??

Copies of assessments and care plans

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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.

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

Adults refusing support

Ombudsman 2016

- Adult with physical & mental disabilities including significant difficulties with communication and behaviour.
- He had eligible needs for equipment and personal care but on many occasions declined support / cancelled services.

Due to his medical conditions and disabilities, Mr X does not always respond in the most helpful way and at times this causes him to be disadvantaged

Adults refusing support

- Council policy to close the case to the allocated worker once the situation is stable
- *I could not see any point at which it might have been justified in saying it was stable.*
- It was the Council's responsibility to ensure his needs were assessed and eligible needs met.
- His behaviour meant this not straightforward but "*Council should have continued exploring alternative ways to achieve successful assessment and service provision*".
- This was not a case of Mr X choosing not to cooperate, but of his disability causing him difficulties in doing so.

Complaint no. 15 008 589 Suffolk CC 10/10/16

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.

Ombudsman decision?

In what way would this decision be open to challenge?

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

Direct Payments

Sections 50 - 53

Little change

- 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)

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

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.

Ordinary residence (ss39 – 41)

Basic principle remains – OR is your 'base'

Two 'deeming rules'

1. If in an NHS facility, OR is where person was based immediately before the NHS accommodation
2. If a LA arranges and funds care in a care home then the person is deemed to be OR in the LA's area even if the care home is in another area

Ordinary residence dispute

- An OR dispute between two councils – which included allegations that a letter had not been received when the disabled person moved to the new authority.
- The ombudsman report states that the records held by the councils show a lack of interest in ensuring one or the other took responsibility for Mr Y's care needs. ... Both councils lost sight of the key priority which was the wellbeing of Mr Y. Council A's evidence of attempts to communicate with Council B do not relieve it of the responsibility to fund Mr Y until the dispute was resolved.

Complaint against Oxfordshire CC & Barnet LBC 16/8/16

section 56

Portability

- Language (sending / receiving)
- If 1st authority notifies 2nd authority that person is moving;
- When person has moved:
- If 2nd authority not assessed / or put in place care plan,
- Then 2nd authority must meet the same needs as 1st authority
- **Problem:**
- What if it doesn't?!

Continuity of care (Ombudsman)

- A disabled person's 1st council notified new authority of intended move on the 31st August and provided it with an up-to-date assessment.
- 2nd council failed to assess until the 27th August. SW recommended same package as previously but on the 23rd November council's panel reduced this substantially and the new package backdated to the 31st August.
- Maladministration:
- no evidence panel considered (a) previous assessment, or (b) impact on primary carers (parents).
- failure to fund existing level of care from the date of move until it made a decision on the level of funding it would provide.

Complaint against Isle of Wight Council 9/8/16.

s117 Mental Health Act 1983

Patients detained under:

- s3 MHA 1983
- (or a criminal provisions)

when discharged

- free after care services under s117 MHA 1983.
- Joint NHS / social services duty

S117 Mental Health Act 1983

- ***R (M) v Hammersmith & Fulham LBC (2010)***
- Accommodated in a care home [under SS&W-bA 2014] by Hammersmith in Hammersmith: therefore OR in..... ?
- Admitted to hospital after an accident: and on discharge enters Sutton care home funded by Hammersmith: therefore OR in..... ?
- Admitted to a psychiatric unit under s2 MHA 1983 and on discharge returns to same care home: therefore OR in..... ?
- Admitted again but this time under s3 and on discharge returns to same care home: therefore OR in..... ?

S117 & Ordinary Residence

Primary social care obligation rests with LA in which the person was OR immediately before being detained.

- if OR in LA (A) before detention and moves on discharge to LA (B) and moves again to LA (C)
- LA (A) will remain responsible
- Unless patient, having become OR in (B) or (C), is subsequently detained in hospital for treatment again

NHS Continuing Care

Section 47

- The 'limits of social care' provisions is not found in section 47 Social Services and Well-being (Wales) Act 2014
- Intended that the position be unchanged from that which existed under the previous legislation (ie National Assistance Act 1948)
