

## Factsheet 41

# How to get care and support

November 2017

### About this factsheet

This factsheet explains the process for:

- obtaining a local authority assessment of your care and support needs whether you are someone who needs care or are a carer
- deciding whether you are eligible to receive care and support services
- agreeing a plan to meet your care and support needs, including the cost and any contribution you have to make.

It also explains what should happen if you are found to be ineligible for services.

Age UK has a number of other factsheets which explain parts of the social care system in more detail. You can call Age UK Advice for copies of other related factsheets or go to [www.ageuk.org.uk/publications/home-and-care-publications/](http://www.ageuk.org.uk/publications/home-and-care-publications/)

This factsheet also covers how you should be treated if you must pay the full amount for care and support services following an assessment. This is known as being a '*self-funder*'.

The information in this factsheet is correct for the period November 2017 to October 2018. Benefit rates are reviewed annually and take effect in April but rules and figures can sometimes change during the year.

The information in this factsheet is applicable in England. If you are in Scotland, Wales or Northern Ireland, contact Age Scotland, Age Cymru or Age NI for their version of this factsheet. Contact details can be found at the back of this factsheet.

Contact details for organisations mentioned in this factsheet can be found in the Useful Organisations section.

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## 1 Recent developments

- This factsheet is based on the *Care Act 2014* ('the Act'), its supporting regulations and the *Care and Support Statutory Guidance 2014* ('the guidance'), introduced in April 2015.
- In the summer of 2017, the Government announced plans to publish a Green Paper to consider options for a new social care funding system.

## 2 A single, unifying, Act

One key purpose of introducing the Act in April 2015 was to consolidate the law, making it simpler and more accessible, and to bring it up to date.

The theme of '*personalisation*' is central throughout in the Act and guidance. Essentially, it is intended to put the person requiring care and support at the centre of the process and ensure their wishes and desired outcomes for care and support are properly recognised.

### 2.1 The structure of the law under the *Care Act 2014*

The Act sets out the legal powers and duties of local authority adult social services. There are 21 sets of accompanying regulations. Guidance about putting the law into practice is in the *Care and Support Statutory Guidance 2014*.

#### What do the legal terms mean?

Acts of Parliament, like the *Care Act 2014*, place **duties** on public bodies such as local authorities. These duties have to be carried out. If they are not, the local authority can be legally challenged in court proceedings.

Acts give public bodies **powers** to do things, giving them a choice or discretion as to whether they do something or not. If the Act gives a local authority discretion, for example to support you even if you do not meet eligibility criteria, they do not necessarily have to provide that support - they can choose.

They must exercise the choice in an appropriate way, for example, looking at all relevant facts and giving reasons for decisions. If they do not use their powers appropriately, they can be challenged for '*fettering their discretion*' or applying a blanket policy, which means being insufficiently flexible.

#### Do local authorities have to follow statutory guidance?

The *Care and Support Statutory Guidance 2014* should be followed by local authorities in general. For example, when it says a local authority '*must*' do something, in the absence of a very good reason, it must do it.

Otherwise, they can face a judicial review or a finding of maladministration by the Local Government Ombudsman.

## 2.2 Definitions and terms used in this factsheet

### Local authority and social care services

References to a '*local authority*' refer to the adult social services department of your local authority or council. It is used to describe similar departments in: a county council, a district council for an area in which there is no county council, a London borough council, or the Common Council of the City of London. In areas with two-tier local government, the county council is responsible for social services.

The adult social care department is part of social services at your local authority. They are responsible for assessing your need for care and support services, deciding whether your needs meet the eligibility criteria and possibly providing financial support to meet your eligible needs.

We use the terms '*local authority*' or '*adult social care*' in this factsheet.

### Other terms in the Act

**Adult** (with care and support needs) means a person with an illness or disability which gives rise to long term care needs. We use the term '*older person*', but the Act applies to anyone who is 18 or over with care needs.

**Carer** means a person providing informal care for an adult with care needs. It is usually a partner, spouse, civil partner or family member, but may be a friend or neighbour. It does not include a care worker providing paid care, or a volunteer through a befriending scheme.

This definition relates to receiving local authority support. The rules for carers to receive Carers' Allowance are different.

**Individual** means both carers and adults with needs.

**Social worker** refers to any social care professional. Your assessment may not be carried out by a qualified social worker. You may be assessed by an occupational therapist employed by a local authority.

## 3 An overview of the process

### Local authority referral

There are different ways that your situation can be brought to the attention of the local authority including: a self-referral; a referral from a carer, friend or family member; or from a professional such as your GP, with your permission. It may be by a doctor or nurse in a hospital setting if you need help at home following discharge from hospital.

### Carers

If you get help from a friend or family member (a carer), your carer's own needs and opinions should be considered and taken into account as part of your assessment. Your carer has a right to their own assessment in parallel or jointly with yours. A carer has an absolute right to have their eligible support needs met under the Act.

### Assessment

Before the local authority can assist you, it must carry out an assessment of your care and support needs – a '*needs*' assessment. This is a legal duty and the assessment must take into account all aspects of your needs. An older person is almost always entitled to a needs assessment. This right is not affected by your financial or other circumstances. You are given a copy of your assessment.

### Eligibility criteria

After a needs assessment, the local authority must decide whether or not it should provide or arrange care services for you. They use standard eligibility criteria to make the decision. The carer's eligibility criteria are slightly different to the adult's. If you are found to be ineligible after your local authority assessment, prevention and advice duties are triggered to help you stay independent for as long as possible.

### Local authority duty to arrange or provide care and support services

Having established that your identified needs meet the eligibility criteria i.e. you have '*eligible needs*', a local authority has a legal duty to arrange, or provide support for you, to meet those needs that cannot be met by other community support or a carer if you have one.

### The means-test

The local authority carries out a financial assessment ('*means-test*') to establish how much you must contribute to the cost of providing services to meet your assessed needs. Some people have to meet the full costs. The authority must publish information about general fee levels and follow national guidelines when carrying out a means-test.

## Care and support plan

Following the local authority assessment, a care and support plan to meet eligible needs must be discussed, agreed as far as possible and written down. You should be given a copy. This sets out the level and type of help you need, how it will be arranged and funded, what it will cost and how much you may need to contribute.

## NHS care

If you only need health care, approach your family doctor or other health worker. This is usually free at the point of delivery. If you need both health and social care support, authorities and the NHS should work together in an integrated manner. Factsheet 44, *NHS services*, describes the type of health services that are available.

## 4 Getting an assessment

### 4.1 What you need to do first

The first step in obtaining help from your local authority is to ask for a needs assessment. There should be a contact number to start the process. You can phone up and explain why you need an assessment.

Ask for information at the local authority main office or town hall or look at their website. You can find information at the local social care department, a hospital social care department, the library or your GP surgery. You can visit an organisation such as Citizen's Advice or Age UK for advice and information.

Each local authority has its own assessment procedure and information about it should be easily available in writing and on its website. You can refer yourself for an assessment or other people such as friends, family, your GP and other health and social care professionals can refer you with your consent.

### 4.2 Your right to an assessment

**There is a duty on the local authority to assess (a) whether you have needs and (b) if so, what those needs are.**

This principle is set out in the Act and explains the right to an assessment applies regardless of your level of needs and finances. Your financial circumstances are not relevant until the care planning stage. If you are denied an assessment on these grounds, make a complaint.

The assessment duty is triggered where it '*appears*' to the local authority that you '*may have needs for care and support*' that it may have a duty to meet, so it must find out once it becomes aware of this information. For carers, the duty relates to potential support needs it may have a duty to meet.

The right usually links to living in an area and having '*ordinary residence*' rights, see section 15. However, the Act states you may have a right to a service if you are present in an area and are not ordinarily resident elsewhere and you are deemed to be of '*no settled residence*'.

### Assessment timeframe

The law does not say how quickly an assessment should take place, but it should be carried out in an **appropriate and reasonable** timeframe, taking into account all relevant details and the urgency of your needs. A local authority should be able to give you an idea of general timescales.

If you are in **urgent** need of care, for example because you rely on a carer who has been taken ill, the local authority has a power to provide care services without waiting for an assessment, which should still happen at a later date.

### Note about carers

As a carer, you are entitled to an assessment of future needs as well as current needs. This is useful if you are about to take on a caring role and you want to get help and information from the local authority about the support you may be entitled to and advice about managing work and caring or other responsibilities.

## 4.3 What is a needs assessment?

Each local authority has discretion about how it carries out assessments, but there are common principles in the Act that must be followed. For example, your assessment:

- must consider the impact on your wellbeing of any difficulties you have and the outcomes you want to achieve in daily life
- can involve your carer, or anyone else you choose, to give a full picture of your situation
- must look at if your needs can be met via community resources or advice and information, before providing local authority services.

For carers, the carer's assessments must consider:

- whether your carer is, and is likely to continue to be, able and willing to provide care and support to you
- whether your carer works or wishes to
- whether your carer is participating in, or wishes to participate in, education, training or recreation.



Being a carer should be a choice someone makes in all circumstances. It must never be assumed as an existing role by a local authority when carrying out a needs assessment or advising on potential rights to services. It must confirm a commitment is in place, and is safe and appropriate for it to continue, before concluding that some, or all, of your needs can be met by a carer.

If you have a carer, your assessment must document your needs regardless of their contribution and state which needs the carer is willing to meet. The statutory guidance explains the assessment process is:

*not just... a gateway to care and support, but should be seen as a critical intervention in its own right, which can help people to understand their situation and the needs they have, to reduce or delay the onset of greater needs, and to access support when they require it.*

This shows the preventive role of assessment, so access should not be limited by local authorities to try to reduce potential demand for services.

### **User involvement**

An assessment must be carried out in an appropriate and proportionate way in relation to your individual needs and circumstances and enable you to participate as fully as possible. Thus, the local authority has to take your wishes and preferences into account, as well as valuing the outcome you want from the assessment. It must understand the severity and extent of your needs within your daily living context.

If you have a fluctuating condition, such as multiple sclerosis, the assessment should span a long enough period to get an accurate indication of your levels of need overall.

The local authority must give you information about the process prior to the assessment whenever practicable and in a format accessible to you. This includes large print or translated material. Your local authority may need to provide translation services if there are language issues to enable you to clearly explain your needs and wishes.

### **Suitably skilled assessor**

The assessment must be carried out by someone with relevant skills, knowledge and competence and who must be appropriately trained. This is not necessarily a qualified social worker, but it should be someone who is competent and trained to do the job.

If you have complex needs, you are more likely to be assessed by a qualified social worker or an occupational therapist, or both together. Occupational therapists work with social workers and often focus on: manual handling, rehabilitation, disability equipment, home adaptations and disability-related rehousing. If you have a specialist condition, such as dementia, and especially if you are both deaf and blind, you must have a suitably trained specialist involved in your assessment.

## 4.4 Types of assessment

Assessments may be:

- face-to-face
- supported self-assessment
- on-line or phone assessment, or
- combined or joint assessments.

An assessment is a way to obtain sufficient information and should maximise your participation. It must be suitable to achieve these two aims. It can take place over the phone although cases are generally too complex for this approach, so face-to-face is required. If there is concern about your capacity to make a decision, for example because of dementia, acquired brain injury, learning disability, or mental health needs, or your case is just complex, a face-to-face assessment should always be arranged.

If a supported self-assessment is offered, you can refuse this if you do not want one. Usually, a self-assessment form is sent to you to think about and fill in. This is checked by your social worker or care manager. The local authority must be certain it reflects all your care needs and how those needs impact on your wellbeing, which might require obtaining further information.

Combined assessments are most likely to be a combination of mental health and social care, or health and social care. You do not have to agree to a combined assessment, but it may be a good way of encouraging health and social care to work together. Joint assessments usually assess the needs of you and your carer together. This can work well, but sometimes you may feel you would benefit from the chance to talk to your social worker or care manager in private.

If a local authority wants to carry out an assessment in a certain way, such as over the phone, and you think this will not reflect your needs properly, explain why and ask for a face-to-face assessment. If this is refused, challenge the refusal by making a complaint.

### Useful tips

When going through an assessment, whether as an older person with care needs or a carer, it is important to ensure you give your social worker the full picture. Resist the temptation to say things are better than they are or that you are managing when in reality you are struggling. You only get help if you convince the local authority you need it.

Local authorities have responded to recent financial pressures by concentrating mostly on care services to make sure people can function – get up, get dressed, keep clean etc. They often ignore wider social needs, for instance support to enable you get out and about and be involved in your local community to stop you being isolated at home.

The emphasis on prevention and wellbeing in the Act means it should be harder for local authorities to ignore wider '*quality of life*' care issues. All wellbeing factors are equally important. Recent court cases confirmed an assessment can be unlawful if it fails to give sufficient weight to wellbeing factors.

Social needs may not be considered unless you point them out and are clear about how important they are to you. If you feel your assessment does not fully reflect all the personal and social care issues you have, ask for them to be included. If that is refused, make a complaint.

### **What if I refuse an assessment or other help?**

You are entitled to refuse an assessment for care and support services, but you can change your mind and the local authority must reconsider your case. There are two situations where a local authority must carry out an assessment, even if you refuse. These are if:

- you lack capacity to refuse and the local authority thinks an assessment is in your '*best interests*', or
- you are experiencing, or at risk of, abuse or neglect.

A local authority is unlikely to be able to say it has discharged its responsibility towards you if you refuse its initial offer of services. Even if you have refused more than once previously, they have a duty to consider a new request for assessment from you.

## **5 The local authority wellbeing duty**

**The local authority must '*actively seek improvements*' in your wellbeing when working with you. Wellbeing is defined in section 1 of the Act.**

This applies whether you are an older person needing care or a carer looking after another adult. It is a fundamental principle, which should inform everything a local authority does.

Wellbeing is a very broad term. Its meaning includes:

- personal dignity (including treating you with respect)
- physical and mental health and emotional wellbeing
- protection from abuse and neglect
- control over your day-to-day life (including care & support arrangements)
- participation in work, education, training or recreation
- social and economic wellbeing
- domestic, family and personal relationships
- suitability of your living accommodation
- your contribution to society.

Your local authority must have regard to other factors including:

- assuming you are best placed to judge your own wellbeing
- your views, wishes, feelings and beliefs
- preventing, delaying or reducing the need for care support
- ensuring all relevant circumstances are taken into account, avoiding unjustified assumptions based on age, appearance or condition
- maximising participation
- achieving a balance between your wellbeing and any carers
- protection from abuse and neglect and
- minimum restriction of rights and freedoms.

The guidance emphasises that:

- there is no hierarchy. All aspects should be considered of equal importance
- promoting wellbeing means actively seeking improvements
- it applies equally to those who do and do not have eligible needs.

The wellbeing duty applies to local authority planning and commissioning as well as to individuals. It should be seen as the common theme around which care and support is built at local and national levels.

## 6 The eligibility criteria for services

**If your assessed needs meet eligibility criteria, your local authority has a legal duty to ensure those needs are met. The duty is in sections 18 and 20 of the Act.**

The eligibility thresholds are slightly different for adults with care needs and for carers with support needs; and are in the *Care and Support (Eligibility Criteria) Regulations 2014*.

### 6.1 Adults – the service user

You meet the eligibility threshold if:

- you have needs connected with any kind of disability, physical or mental illness
- those needs mean you are unable to achieve two or more required outcomes in the list below, and
- that results, or is likely to result, in a significant impact on your wellbeing.

There is an overlap between the wellbeing list and the outcomes list.

The list of relevant outcomes is:

- (a) managing and maintaining nutrition
- (b) maintaining personal hygiene
- (c) managing toilet needs
- (d) being appropriately clothed (including being able to get dressed)
- (e) being able to make use of your home safely
- (f) maintaining a habitable home environment
- (g) developing and maintaining family or other personal relationships
- (h) accessing and engaging in work, training, education or volunteering
- (i) making use of facilities or services in the local community including public transport, and recreational facilities or services
- (j) carrying out any caring responsibilities you have for a child.

### Meaning of 'unable to'

You are treated as unable to achieve an outcome if you are:

- (a) unable to achieve it without assistance
- (b) able to achieve it without assistance but doing so causes you significant pain, distress or anxiety
- (c) able to achieve it without assistance but doing so endangers or is likely to endanger the health or safety of you, or of others, or
- (d) able to achieve it without assistance but take significantly longer than would normally be expected.

## 6.2 Carers - support

You meet the eligibility threshold if:

- you have needs connected with providing necessary care, and
- those needs mean your physical or mental health is deteriorating or is at risk of deteriorating, or
- you are unable to achieve one or more outcomes in the list below, and
- that results, or is likely to result, in a significant impact on your wellbeing.

The list of relevant outcomes is:

- (a) carrying out any caring responsibilities you have for a child
- (b) providing care to other persons for whom you provide care
- (c) maintaining a habitable home environment in your home (whether or not this is also the home of the adult needing care)
- (d) managing and maintaining nutrition
- (e) developing and maintaining family or other personal relationships
- (f) engaging in work, training, education or volunteering
- (g) making use of necessary facilities or services in the local community, including recreational facilities or services and
- (h) engaging in recreational activities.

## Meaning of 'unable to'

As a carer you are treated as unable to achieve an outcome if you are:

- (a) unable to achieve it without assistance
- (b) able to achieve it without assistance but doing so causes you significant pain, distress or anxiety, or
- (c) able to achieve it without assistance but doing so endangers or is likely to endanger the health or safety of you, or of others.

### 6.3 Applying the criteria – 'significant impact' on wellbeing

There may be problems interpreting exactly what some terms mean. In particular to meet the criteria, you must be unable to meet, or have significant difficulty meeting, specified outcomes, and as a consequence there must be (or likely to be) a significant impact on your wellbeing. This links wellbeing and eligibility together for a final eligibility decision.

The guidance makes two points:

- a local authority need not consider the impact of your inability to achieve individual outcomes but should consider the cumulative effect overall
- 'significant' must have 'its everyday meaning' and may have both an objective (evidence) and subjective (how you feel) element.

Your local authority should determine whether:

- your needs impact on at least one of the areas of wellbeing in a significant way, or
- the effect of the impact on a number of the areas of wellbeing mean that there is a significant impact on your overall wellbeing.

In making this judgement, the local authority must look to understand your needs in the context of what is important to you. Needs affect different people differently, because what is important to one person's wellbeing may not be the same in others.

A recent court case declared that giving insufficient weight to relevant aspects of a person's wellbeing potentially made an assessment unlawful.

### Carers – 'necessary care'

If you are a carer, you must provide 'necessary care'. There may be disagreement about what amounts to necessary care and who decides.

The guidance says:

*If the carer is providing care and support for needs that the adult is capable of meeting themselves, the carer may not be providing necessary support.*

This means the person you care for does not have to have eligible needs for you to be supported as a carer. The basic eligibility decision giving rights to services must be made without consideration of whether there is a carer, or what needs may be met by the carer.

Local authorities must only consider whether you have a carer or what needs may be met by a carer after the eligibility determination when a care and support plan is prepared. Even if needs are met by a willing and able carer, they must be recorded as eligible needs. Guidance says:

*This is to ensure that should there be a breakdown in the caring relationship, the needs are already identified as eligible, and therefore the local authority must take steps to meet them without a further reassessment.*

## 6.4 What happens if I do not meet eligibility criteria?

**Local authorities must give you written reasons explaining why you do not meet the eligibility criteria.**

If you think they have got this wrong, ask for reconsideration or challenge their decision. Local authorities must give you written advice and information about prevention. This is to prevent, delay or reduce your care needs worsening and to help you make informed decisions about meeting your needs.

This means you should not be left alone to cope without any necessary assistance to help you manage your care needs better or help you identify and contact other suitable organisations that can support you.

Even if you do not have eligible needs now, the local authority has a discretion to provide you with care support – it can choose to. In the current financial climate, local authorities only do this in very exceptional circumstances.

The most likely example is to give your carer a break to recharge batteries by providing some alternative care support to you ('*respite care*'). Both of you must agree to the help for this to be done.

## 6.5 Case examples

### Example 1

*If you live alone and find it difficult to get out and about because of mobility problems or because you have become reluctant or scared to go out alone, you must explain what it feels like to you to be stuck indoors and unable to get out and about in your neighbourhood, go to the shops, visit your friends, follow leisure activities you like etc.*

*The assessor may think you are content to stay indoors and it does not have a significant impact on your wellbeing. This could mean you would not be considered eligible for any help to get out and about.*



## Example 2

*You are a carer in your early 60s and are fearful you are going to have to give up work early because of your caring responsibilities unless you get help. It is really important to make it clear how distressing it would be for you to have to do that, the effect on your self-esteem, the financial impact, the impact on your relationships with work colleagues etc. Otherwise the local authority may decide they do not need to put in more help, because the impact of giving up work at your age would not be significant.*

## 6.6 Mental capacity and the duty to meet needs

If you lack mental capacity to meet your own assessed care needs and have no one to support or assist you, your local authority has a duty to assist with arrangements, regardless of your financial situation, to ensure your needs are safely and appropriately met.

Section 18 of the Act confirms this duty to assist if an eligible individual *'lacks capacity to arrange for the provision of care and support'* but *'there is no person authorised to do so under the Mental Capacity Act 2005 or otherwise in a position to do so on the adult's behalf'*.

As mental capacity is *'decision specific'*, you may, for example, be able to decide where to live in a care home but not be able to arrange the contract and other complex issues. Your abilities, support networks and mental capacity must be identified as part of your needs assessment.

## 7 Care and support planning

**Your local authority has a legal duty to meet your eligible needs under the Act (section 18) or those of your carer (section 20).**

If you meet the eligibility criteria, the next stage is to work out which of your care or support needs must be met, how that will happen and how much it will cost. At this stage, the local authority can look at alternative ways to meet your eligible needs. The legal duty is for a local authority to ensure eligible needs are met. This does not mean the whole package of care you need is arranged or funded by the local authority itself.

Having identified your eligible needs without reference to your carer, if you have one, the social worker investigates with you and your carer the ways in which those needs could be met. If your carer is able and willing to go on providing care for you, they can meet some of your needs.

Other needs might be met by universal services in the community. These are services available to people regardless of whether they meet eligibility criteria. They can include: joining a walking group, a club, help from a local clinic, voluntary organisation, community centre or faith group. Your local authority must ensure any eligible needs that cannot be met by other options are met.



## 7.1 Your care and support plan and what it should include

Your care and support plan should be person-centred, with an emphasis on you having every opportunity to be involved in the planning to the extent you choose and are able. This requires the local authority to ensure that information is available in a way that is meaningful to you and you have support and time to consider your options.

The emphasis in guidance is on empowerment through involvement and the exercise of choice. You should expect to work very closely with adult social care in developing your own care plan (if an older person with care needs) or support plan (if a carer). As far as possible, your plan should address how to meet the outcomes you want to achieve.

Elements that must always be included in the plan include:

- the needs identified by the assessment
- whether, and to what extent, the needs meet the eligibility criteria
- the needs the authority is going to meet and how it intends to do so
- if you need care, the care and support relevant to your desired outcomes
- if a carer, the outcomes you want to achieve and your wishes on care, work, education and recreation where support may be relevant
- your personal budget figure
- information and advice on what can be done to reduce the needs in question and to prevent or delay the development of future needs
- if needs are being met via a direct payment, the needs to be met via the direct payment and the amount and frequency of the payments.

### If the local authority is not required to meet needs

If a local authority carries out a needs assessment and decides it is not required to meet your needs, it must give you a written record of the decision and the reasons for it. This could be because you do not have any eligible needs. It can be because the financial assessment finds you have to pay the full amount and can arrange to meet your own needs, or have support to do this in a safe and appropriate manner.

The local authority must provide you with appropriate advice and information, for example how to deal with the local social care system to enable you to meet your own needs, or enabling you to trigger the '*right to request*' procedure, see section 7.3.

#### Note

Section 25 of the Act requires your local authority to give you a copy of your care and support plan. You can ask them to give a copy to your carer or anyone else you choose.

## 7.2 How will my eligible needs for care or support be met?

**Your local authority has a wide discretion as to how to best meet your eligible needs once it has identified them.**

There is no list of services that must be provided. Basic examples of what can meet your needs are in section 8 of the Act and include accommodation in a care home or premises of another type; care and support at home or the community; counselling or other types of social work; goods and facilities; and information, advice and advocacy.

Care and support planning should be a very flexible process. If you have suggestions for a particular service you think would meet your needs, suggest it to adult social care for inclusion in your care plan. As you may not know all the local options to meet your needs, the local authority should provide you with professional advice and support.

Once the range and amount of care and support you need is agreed, there are different ways to put it in place. The cost of agreed services is in your personal budget (see section 10). A care plan can be:

- put in place by the local authority providing or commissioning services for you
- the local authority delegate to another organisation, called a 'broker' or a care coordinator, who works with you to make arrangements, or
- given through direct payments to purchase the care you want yourself.

Care services may be provided by a local authority, a private company, a charity, or any combination of these organisations.

Once support is provided, it must be checked or reviewed regularly to confirm it is appropriate and safe, there are no changes in your needs, and that funding is adequate. Being asked to pay the full amount to meet your assessed needs should not result in the local authority relinquishing its duty of care towards you. If you have any concerns or your circumstances change, you can ask for a review.

## 7.3 Self-funders' 'right to request' having needs met

You have a 'right to request' having your eligible care needs met where your assets exceed the limits in your financial assessment, or your income is higher than the cost of the service, under section 17 of the Act. This means you must pay for care services in full ('a self-funder').

**A local authority can choose whether to assist you if you have a care home need. However, it has a duty to assist in all other situations if you are a self-funder with assessed care needs.**

Statutory guidance notes a request for support can be made for a variety of reasons such as your finding the system difficult to navigate, or wishing to take advantage of their expert knowledge of local care and support services in terms of availability and cost.

## The arrangement fee

The local authority can choose to charge you for meeting this duty. It can charge the full cost for care and support provided, plus an arrangement fee. The statutory guidance states:

*arrangement fees charged by local authorities must cover only the costs that the local authorities actually incur in arranging care. Arrangement fees should take account of the cost of negotiating and/or managing the contract with a provider and cover any administration costs incurred.*

There should be a written agreement to avoid disputes about future funding liabilities.

## Residential care: a legal anomaly if you have mental capacity

If you are a self-funder with mental capacity but have no one to assist you and you cannot arrange your own care home placement for any reason, there is no legal protection under the Act. Statutory guidance limits the 'right to request' duty to non-residential care. However, given its broad legal and ethical duties, a local authority should not refuse assistance in situations where there is a genuine need or risk.

If a request for assistance is agreed to in this situation by a local authority, it cannot charge an arrangement fee as they use discretion to do this, rather than acting under the legal duty.

## 8 Types of care

The support and care you receive can be anything reasonably required to meet your assessed care needs, but it must directly relate to the needs included in your care and support plan. If you are a carer, it must be something that supports your caring role and helps sustain that role. This can, for example, include training to help you combine work with your caring role.

The local authority has a duty to promote the local market so that there is a range of service providers and 'a variety of high quality services to choose from', under section 5 of the Act.

### 8.1 Care in your own home

Following your needs assessment, you may receive care and support at home. This can be to assist you with any aspect of personal care such as washing, dressing, going to the toilet, or getting from one place to another such as bed to chair, and also possibly domestic tasks, or other aspects such as reminders to take medication.

You may need assistance to go outside or attend a day centre on a regular basis. The assistance you have depends on your particular needs.

Care assistants can be provided by an agency or you receive direct payments to employ a personal assistant. The length of time a carer stays with you must be sufficient to meet your assessed needs and to ensure your wellbeing is maximised. For example, you should be treated with dignity and respect. Guidance states:

*...short home-care visits of 15 minutes or less are not appropriate for people who need support with intimate care needs, though such visits may be appropriate for checking someone has returned home safely from visiting a day centre, or whether medication has been taken (but not the administration of medicine) or where they are requested as a matter of personal choice.*

You may be entitled to aids (disability equipment), home adaptations or telecare equipment to make it easier and safer for you to live in your own home independently. For more information, see factsheet 6, *Finding help at home*, and factsheet 42, *Disability equipment and home adaptations*.

## 8.2 Residential care homes

There are two types of care homes: **residential and nursing**. Your social worker can help you identify which is appropriate for your needs.

**Residential care homes** - social care needs only. These do not provide any nursing staff and medical care should be provided by NHS staff coming to the home as necessary.

**Nursing homes** - if you have specific nursing needs. These employ a mixture of social care and nursing staff. The NHS is responsible for meeting the cost of care you need from a registered nurse. This is a standard amount, called the '*NHS funded nursing care contribution*'.

You cannot be forced to move into a care home against your will, as long as you are mentally capable of making the decision yourself. However, you may be advised, following an assessment at home or in hospital, that it is the only safe and effective way of meeting your care needs. Alternatively you may decide this is the right decision for you to take.

If you do not want to move into a care home, say so and talk to your social worker. They can explore whether your needs can be met in your own home through a combination of care support, such as care staff and equipment, and informal or family carer support you may have available.

### Supported living

Another housing option is '*supported living*', which is adapted housing or housing with care combined. An example is extra-care housing. This enables you to continue to have your own self-contained flat, but with care support available and some communal space to meet other residents, if and when you want to.

For more information about housing options see factsheet 64, *Specialist housing for older people*.

## NHS continuing healthcare

If you need nursing care and your needs are significant and primarily health-related rather than social care-related, you may be eligible for NHS continuing healthcare. You must be assessed for this separately. See factsheet 20, *NHS continuing healthcare and NHS-funded nursing care*, for more information.

## 9 Preventing and reducing needs

There is considerable emphasis on prevention in the Act to keep you healthy and able to look after yourself for as long as possible. Local authorities must provide or arrange for the provision of services, facilities or resources to prevent, delay or reduce the need for care and support for adults and carers.

This is a proactive duty and local authorities, in their preventative work, must have regard to the importance of:

- identifying existing services, facilities and resources
- identifying adults with care and support needs that are not being met, and
- carers with support needs that are not being met.

They have a discretionary power to charge for preventative services. Guidance states there is no need to apply the charging regulations to preventative services. You may be offered one or more preventative services. There can be a charge for the service as each local authority has their own policy on charging.

Any charge should be affordable to you. Local authorities should provide written information if you receive preventative support. The information must specify your needs, why the action is proposed, expected outcomes, timescale and what happens next.

Whether you are someone who needs care or a carer, and regardless of whether you meet the eligibility criteria, you should at least be offered written advice and information about what you can do to prevent, delay or reduce care and support needs.

Guidance states small home adaptations, short-term rehabilitation (reablement) services, and community equipment can come within the definition of preventive services as well as those required to meet eligible needs.

## 10 Personal budgets and direct payments

**A personal budget is the ‘cost to the local authority’ of meeting those needs it is required or decides to meet, what you must pay, and what their financial contribution is (section 26 of the Act).**

In practice, your care plan includes a personal budget whether you are an older person with care needs or a carer. The personal budget is a key part of a person-centred care and support system. Your personal budget care funds can be provided in three ways:

- a managed account held by the local authority with support provided in line with your wishes
- a managed account held by a third party (often called an *individual service fund*) with support provided in line with your wishes
- direct payments – cash paid directly to you.

### 10.1 Calculating your personal budget

This is usually done in two stages. After the assessment and eligibility decision, the local authority decides an initial, approximate figure, often computer generated, called an ‘*indicative personal budget*’.

This is the start point for care and support planning. As decisions about meeting eligible care needs become clearer and more detailed, the indicative personal budget often needs to be adjusted to take account of your particular situation. This may result in increases or decreases to the initial indicative amount to come to a final, accurate, one.

Guidance states that in establishing ‘*the cost to the local authority*’ of ensuring your eligible needs are met:

*...consideration should be given to local market intelligence and costs of local quality provision to ensure that the personal budget reflects local market conditions and that appropriate care that meets needs can be obtained for the amount specified in the budget. To further aid the transparency principle, these cost assumptions should be shared with the person so they are aware of how their personal budget was established.*

General principles about personal budgets in the guidance include:

- **Transparency** - you should be assisted to understand how your personal budget is calculated and the reason for the final amount.
- **Timely** - ensuring your indicative figure is given quickly to enable the care planning process to get underway once your needs are identified.
- **Sufficient** to meet your needs. Guidance states a local authority should not have ‘*arbitrary ceilings*’ to personal budgets that result in you, for example, being forced to move into care home against your will.
- **Reasons** for your personal budget figure should be given so you, your carer or independent advocate can challenge indicative or final amounts.



## Resource allocation system

Some local authorities calculate the indicative personal budget figure using a resource allocation scheme (RAS). This usually consists of an assessment questionnaire, which awards points depending on your level of needs.

A computer programme uses your points to generate your indicative budget. This should only be seen as an estimated figure, which must be checked against the reality of your situation.

## Carers

If you are a carer and you meet the eligibility criteria, you should receive an individual personal budget sufficient to meet your eligible needs. It should not be a flat rate standard amount, but tailored to your situation. You have parallel and equal rights to the person you care for.

## The use of funding panels

There has been concern about the use of funding panels to drive down local authority costs and to side-step legal duties to meet all eligible needs.

Guidance confirms they can be a necessary expert checking and governance mechanism, for example for signing off expensive or novel personal budget allocations. It goes on to warn:

*local authorities should refrain from creating or using panels that seek to amend planning decisions, micro-manage the planning process or are in place purely for financial reasons.*

## 10.2 Direct payments

### **You can choose to receive your personal budget by direct payments.**

This allows you to choose your own care staff or other services. For some people, this provides real choice and freedom to meet care or support needs in the way that suits them best. It brings additional responsibilities of recruiting care staff and becoming an employer. Most local authorities offer help and advice if you choose to do this.

These are not for everyone and you have a choice whether you want direct payments or you want care and support arrangements provided on your behalf by the local authority or a third party. For more information, see factsheet 24, *Personal budgets and direct payments in adult social care*.

## 11 Paying for care at home or in a care home

**For most people, social and personal care are means-tested. This means you may have to contribute to the cost of required services.**

The financial assessment or '*means-test*' is how a local authority calculates how much you must contribute to your care and support, when arranged by the local authority. Your income and capital (e.g. savings) may be taken into account. The rules for calculating your contribution are complicated.

Most people are required to make some financial contribution towards the cost of their care and support services, whether provided at home or in a residential home. There are minimum income levels that you should not be required to go below if you do pay towards services.

For information on paying for care at home, see factsheet 46, *Paying for care and support at home*. For information on paying for care in a residential home, see factsheet 10, *Paying for permanent residential care*.

### 11.1 Free services

Not every element of care support to meet your assessed eligible needs is chargeable. Some services must be provided free of charge. They are:

- **Community equipment (aids and minor adaptations)** '*for the purpose of assisting nursing at home or aiding daily living*'. Minor adaptations are those costing £1,000 or less. More expensive home adaptations are funded via a means tested grant. '*Aids*' means disability equipment and must always be provided free of charge, regardless of cost.
- **Intermediate care (including reablement support)** is a short-term rehabilitation programme to enable you to maintain or regain the skills needed to live independently in your own home. It might be called reablement, intermediate care, hospital at home or similar.

It may be provided by the NHS post-discharge or your local authority. It must be free for at least the first 6 weeks. For more information, see factsheet 76, *Intermediate care and reablement*.

- **Mental health.** A local authority cannot ask you to pay for services provided or arranged under section 117 of the *Mental Health Act 1983*.

These are services for the prevention, after-care and supervision of people with a mental illness or disorder who have previously been detained in hospital under specific sections or criminal provisions of the *Mental Health Act 1983*. They aim to ensure you do not return to hospital.

If you are charged for these services, you should challenge this and state they must be provided free of charge.



## 12 Review of services and needs

Your care and support plan must be kept under review (section 27 of the Act). Guidance expects reviews at least every 12 months and a light touch review at 6–8 weeks after a new or revised care or support plan is introduced and services commenced. Each case must be reviewed in line with its individual presenting issues so there may be exceptions to the basic requirements.

A review may be triggered by the local authority, by a crisis, or a '*reasonable request*' from an adult or carer. A reasonable request is usually prompted by a material change in your health or other circumstances affecting the level of care or support needed or the risks you deal with.

If the local authority is satisfied your circumstances have changed in a way affecting an existing care or support plan, they must reassess '*to the extent it considers necessary*'. The key principles governing assessment are equally applicable at the review stage, including working to reach agreement with you about how your needs should be met in future.

### Care package reductions must be justified

Guidance emphasises the review must not be used to arbitrarily reduce the amount of your personal budget or care or support package. It points out such practice is unlawful under the Act as the personal budget must be an amount appropriate to meet your needs.

### Safeguarding concerns

If a local authority becomes concerned about your safety or the safety of someone you care for, they must carry out a safeguarding enquiry to find out if there is abuse or neglect taking place, under section 42 of the Act. This often involves a review. For more information, see factsheet 78, *Safeguarding older people from abuse and neglect*.

## 13 Information, advice and advocacy

A local authority must provide social care information and advice to everyone who needs it in their area. This service must at least cover:

- the care system and how it works locally
- the choice of types of care and support
- the choice of providers
- how to access the care and support that is available
- how to access independent financial advice on matters relevant to meeting care and support needs
- how to raise concerns about the safety or wellbeing of an adult who has needs for care and support (adult safeguarding concerns).

Information must be accessible and proportionate. It must be designed so you can understand it and have the right amount of relevant information for your particular circumstances.

### 13.1 Your rights to advocacy

An advocate is a professional whose job it is to help you understand the system and put your views across in various situations. They try to find out what you, or the person you care for, wants and feels and help identify what is in your, or their, best interests.

Your local authority independent advocacy scheme is intended to help if you experience '*substantial difficulties*' in understanding or making decisions about your care and support and have no '*appropriate person*' (carer, friend or family member) to help you engage in the process.

This builds on an existing scheme (under the *Mental Capacity Act 2005*) for people with significant mental impairment. You may be entitled to an advocate at key stages in the social care process. This right applies if you have substantial difficulty with any of the following:

- understanding relevant information about social care and health issues
- retaining that information
- using or weighing up the information
- communicating your views, wishes or feelings.

If you care for an older person like this, they are usually not entitled to an advocate, because you are seen as an appropriate person, so an advocate is not necessary. This may change if there is a dispute between you and the local authority over what is best for the person you care for.

If the local authority thinks what you want for that person is not in their best interests, or is not the same as they want, they can and should appoint an independent advocate.

They must appoint an advocate if the assessment and care planning process is likely to lead to you going into hospital for 28 days or more, or care home accommodation for longer than 8 weeks, and the local authority thinks it is in your best interests.

The advocate must be properly trained, of good character and completely independent of the local authority. They must challenge any decision made in the assessment and care-planning process that they think is inconsistent with the Act's wellbeing principles.

## 14 Moving from one local authority area to another

If you have an existing care plan and support in place and you want to move to a different area, you must notify the new local authority of your intention to move to its area. Provided they are satisfied your intention is genuine, the receiving authority is under a duty (section 37 of the Act) to:

- provide appropriate information to you and your carer (e.g. about how the care system works in the new area)
- notify the first authority, which must provide various documents
- assess your needs regarding existing care and support arrangements
- provide written reasons if it comes to a different decision about your needs or your personal budget.

When notified, your current local authority must provide all necessary information to the receiving authority. Pending the move, it must keep you informed of progress.

If new arrangements are not in place when you move, the local authority you move to must honour the commitments of the other authority until it completes its own assessment and care and support planning and puts provision in place (section 38 of the Act).

This means you should not have gaps in your care support when you move. Once reassessed, you become the responsibility of your new local authority. Guidance advises you should be able to take any equipment to your new home. This includes items like a special bed, for example.

## 15 Ordinary residence and rights to services

**You generally need to be ‘ordinarily resident’ in a local authority area to be eligible for services from that particular authority.**

This status is usually obvious as most people live permanently in the area where they seek support. However, sometimes ordinary residence is not easy to decide and disputes can arise between local authorities over their legal responsibilities.

There is no statutory legal definition of ordinary residence. The definition most often used is from the case of *Shah v London Borough of Barnet* (1983).

Lord Scarman described ordinary residence as referring to:

*...a man's abode in a particular place or country which he has adopted voluntarily and for settled purposes as part of the regular order of his life for the time being, whether of a short or long period.*

So ordinary residence is about where you choose to be, even if you have not been there very long.

Local authorities must support people with eligible needs who are of '**no settled residence**', but present in the area (section 18 of the Act). This means they are not ordinarily resident elsewhere. They have an additional power to support people with **urgent needs** regardless of whether they are ordinarily resident (section 19 of the Act).

Guidance states some people **returning from overseas**, who have no permanent home here, can be people of no settled residence. Annex H6 of the guidance notes it is more common for people coming back from a spell living abroad to come to an area because they want to settle close to family members or friends. In that case they are ordinarily resident in that area.

### The deeming principle

Sometimes the local authority for the area you live in (area A) may support you to move into a care home in a different local authority area (area B). This can be to meet a specific eligible need or because it is important for you to be close to family members; or because you have chosen to live in a care home in another area in England.

If your placement is funded by the local authority in area A, you are treated as though you are still ordinarily resident in that area and they remain responsible for meeting your care needs, even though you have moved to area B. You are '*deemed*' to still be resident in area A. This principle applies to supported living services such as extra-care housing.

Procedures for moves between specified accommodation types in England, Northern Ireland, Scotland and Wales are in regulations. However, the continuity of care rights in section 14, which include non-residential care, seem only to apply to England. Both authorities in all types of situation should work together and share information in a timely manner to ensure appropriate planning and that needs are met both on the day of the move and subsequently.

If you **self-fund** and decide to move to a care home in another area, you are ordinarily resident in the new area and the deeming principle does not apply to you.

### If you lack mental capacity

If you lack mental capacity to make a decision to move areas, for instance because of advancing dementia, you should be treated in exactly the same way as people who can decide for themselves.

For example, if you are a self-funder and move into a care home in another authority, your ordinary residence moves with you, despite your lack of capacity to make that choice. If you are funded by the local authority, you are deemed to remain ordinarily resident in the area you lived in immediately prior to the move.

## Where local authorities disagree

If two or more local authorities cannot agree who is responsible, there is a legal procedure they must follow and the Secretary of State for Health makes the decision about responsibility. Guidance states:

*the determination of ordinary residence must not delay the process of meeting needs. In cases where the ordinary residence is not certain, the local authority should meet the individual's needs first, and then resolve the question of residence subsequently.*

### Note

Ordinary residence should not be confused with habitual residence, which relates to social security benefits and housing.

## 16 Complaints, rights and safeguarding

### 16.1 How to challenge decisions and complain

It is not always possible to reach agreement with your local authority. The types of things that can go wrong include:

- you are wrongly denied an assessment
- your assessment has not considered all aspects of your needs properly, for instance it has not taken social needs into account
- the local authority decides you do not meet eligibility criteria
- you do not agree your care plan covers all your eligible needs and/or you think the allocated personal budget amount is too low
- you have not been given a written copy of your care plan or assessed charges for services
- excessive delays and poor communication
- a review of your case seeks to cut your services to save money rather than due to reduced needs
- you are a carer and your support needs are not adequately considered and/or you are being forced into a position where you have to do more caring than you are able or willing to do.

These are just a few examples and you may have other or different concerns.

## Using the complaints procedure

You can challenge any action or decision of a local authority if you disagree with it. For example, you can ask them to think again about your case and to review a decision. If you do, it is helpful to explain why you are unhappy.

Some issues can be resolved informally. If a request for a review does not resolve the problem, consider taking further steps, such as making a formal complaint.

For more information, see factsheet 59, *How to resolve problems and complain about social care*.

## Complaining to the Local Government Ombudsman

If you are not satisfied with the local authority response or handling of your complaint, you can take the matter further with the Local Government Ombudsman (LGO). The LGO is completely independent of the local authority and can carry out an investigation of complaints of maladministration leading to injustice.

The complaint must be made within one year of the incident causing your complaint, although the LGO has discretion to extend the time limit. If the LGO uphold your complaint, they make recommendations to the local authority about how they should recompense you for any injustice experienced.

Self-funders cannot normally complain to the local authority, as the authority is not supporting them. Under the *Health Act 2009*, you can, as a self-funder complain to the LGO, provided you have complained to your care provider first.

## Other action you might take

You may wish to contact your local councillor to see if they can support you in putting your case, or relevant support groups, or your MP.

Another option is to bring a legal case by way of **judicial review**. This is a challenge to the lawfulness of actions or decisions of a public body, such as a local authority. This can be a very effective remedy, but it is potentially expensive, unless you meet the means test for legal aid.

It is a complex procedure and requires advice from a suitably qualified and experienced lawyer. There is a time limit of three months, so if you want advice about this, it is important to get it very quickly. For more information, see factsheet 43, *Getting legal advice*.

## 16.2 Rights and protections

### Care Quality Commission

The Care Quality Commission (CQC) does not investigate individual complaints. It is responsible for the registration of providers and for regulating and maintaining standards in health and social care in England. They set minimum standards for all provider organisations and monitor them via inspection and information gathering.

If you report concerns about quality of care or safeguarding risks in a care home or home care provider, they must check whether standards of care are being maintained and take appropriate action if not.

### 'Best interests', rights and safeguarding

Anyone working with you should treat you with respect, value your dignity and take account of your wishes and feelings. If you lack mental capacity, all actions taken by people supporting you must be taken in your '*best interests*' as defined by the *Mental Capacity Act 2005* and its Code of Practice. For more information, see factsheet 22, *Arranging for someone to make decisions about your finances and welfare*.

Your local authority must act within human rights and equality laws. Staff must be appropriately trained and take a rights-based approach to their work with you. For example, they should understand how to protect your home and family life, if possible, within their decisions and actions. They should be aware of the potential for age or disability-related discrimination in general and work to combat it.

If you, or someone you care for, is being abused or neglected, report this to your local authority who must respond to ensure the issue is dealt with appropriately and in line with your wishes. For more information, see factsheet 78, *Safeguarding older people from abuse and neglect*.



## Useful organisations

### Care Quality Commission

[www.cqc.org.uk](http://www.cqc.org.uk)

Telephone 03000 616 161 (free call)

Independent regulator of adult health and social care services in England, covering NHS, local authorities, private companies or voluntary organisations and people detained under the *Mental Health Act*.

### Carers UK

[www.carersuk.org](http://www.carersuk.org)

Telephone 0808 808 7777

Provides information and support for carers, including information about benefits.

### Citizens Advice

England or Wales go to [www.citizensadvice.org.uk](http://www.citizensadvice.org.uk)

Northern Ireland go to [www.citizensadvice.co.uk](http://www.citizensadvice.co.uk)

Scotland go to [www.cas.org.uk](http://www.cas.org.uk)

In England telephone 0344 411 1444

In Wales telephone 0344 477 2020

In Scotland telephone 0808 800 9060

National network of advice centres offering free, confidential, independent advice, face to face or by telephone.

### Disability Rights UK

[www.disabilityrightsuk.org](http://www.disabilityrightsuk.org)

Telephone 020 7250 8181

Promotes meaningful independent living for disabled people; disabled people's leadership and control; breaking the link between disability and poverty; and campaigning for disability equality and human rights.

### Equality and Human Rights Commission (EHRC)

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

Telephone 0808 800 0082

The EHRC Disability Helpline provides information and advice about all aspects of the Disability Discrimination Act.

### Independent Age

[www.independentage.org](http://www.independentage.org)

Telephone helpline 0800 319 6789 Mon-Fri 8am- 8pm, Sat-Sun 9am-5pm

A charity providing free impartial advice on benefits, home care, care homes and NHS services for older people, their families and professionals



**Local Government Ombudsman**

[www.lgo.org.uk](http://www.lgo.org.uk)

Telephone 0300 061 0614

The Local Government Ombudsman investigates complaints of injustice arising from maladministration by local authorities.

**Mind**

[www.mind.org.uk](http://www.mind.org.uk)

Telephone 0300 123 3393

Provides information and advice for people with mental health problems

**Turn 2 Us**

[www.turn2us.org.uk/](http://www.turn2us.org.uk/)

0808 802 2000

Turn2us is a national charity that helps people in financial hardship to gain access to welfare benefits, charitable grants and support services.

## Age UK

Age UK provides advice and information for people in later life through our Age UK Advice line, publications and online. Call Age UK Advice or Age Cymru Advice to find out whether there is a local Age UK near you, and to order free copies of our information guides and factsheets.

### Age UK Advice

[www.ageuk.org.uk](http://www.ageuk.org.uk)

0800 169 65 65

Lines are open seven days a week from 8.00am to 7.00pm

### In Wales contact

#### Age Cymru Advice

[www.agecymru.org.uk](http://www.agecymru.org.uk)

0800 022 3444

### In Northern Ireland contact

#### Age NI

[www.ageni.org](http://www.ageni.org)

0808 808 7575

### In Scotland contact

#### Age Scotland

[www.agescotland.org.uk](http://www.agescotland.org.uk)

0800 124 4222

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