

## Care and Support Eligibility Policy - Operating Guidance

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## 1. INTRODUCTION

Under section 9 of the Care Act 2014, Torbay Council and their delegated provider, Torbay and South Devon NHS Foundation Trust (hereafter TSDFT), have a statutory duty to assess the needs of any adult or carer who appears to have needs for care and support and then to determine whether those needs are eligible for support or services from the trust.

Sections 1 and 2 of the Care Act place overarching duties on the Trust to promote an individual's 'wellbeing' and to provide preventative information and/or support that could delay or reduce any needs identified during the assessment process.

This guidance underpins the eligibility policy in place in TSDFT.

## 2. WELLBEING

The principle of wellbeing requires that the wellbeing of all people who appear to be in need of care and support is promoted, including during their assessment and the application of eligibility criteria.

The Act defines wellbeing for individuals as:

- personal dignity (including treatment of the individual with respect)
- physical and mental health and emotional wellbeing
- protection from abuse and neglect
- control by the individual over their day-to-day life (including over care and support provided and the way they are provided)
- participation in work, education, training or recreation
- social and economic wellbeing
- domestic, family and personal
- suitability of the individual's living accommodation
- the individual's contribution to society.

There is no hierarchy in the areas of wellbeing listed above – all are equally important. Wellbeing is a broad concept applying to several areas of life and there is no single definition of wellbeing. How it is interpreted will depend on the individual, their circumstances and their priorities. Therefore, using a holistic approach during the assessment process is vital to ensuring a clear understanding of the individual's views and defining what wellbeing means for them.

## 3. PREVENTION

There is a statutory duty to take action to prevent or delay the development of needs requiring care and support. This duty applies to both adults with needs and young and adult carers with needs.

Where the person may benefit from specific types of preventative support, steps should be taken to assist the person to access those services. Consideration should be given to what else, other than formal services, might support the person to meet the outcomes they want to achieve. This includes identifying strengths, capabilities and resources available within the individual's network that they could draw upon. It also includes small adaptations, equipment or reablement.

## **4. PERSONALISATION**

A cornerstone of the Care Act is to empower individuals through personalised care and to develop care services that best fit around their lives. This in turn can help prevent, reduce or delay the person's need for statutory care services while supporting them to optimise their independence and sense of wellbeing.

TSDFT is committed to using Strengths Based Approach.

## **5. SAFEGUARDING ADULTS FROM ABUSE AND NEGLECT**

Safeguarding and risk assessment have always been a key part of the assessment and support planning processes. The Trust has a duty to make enquiries and take appropriate action if there is reason to expect that abuse has occurred or is likely to occur. If a safeguarding issue is identified during the assessment process, the Multi-Agency Safeguarding Policy and Procedures must be followed.

## **6. ASSESSMENT**

### **6.1 What is an assessment?**

The Care Act makes it clear that an assessment is to be treated as an intervention in its own right. The purpose of an assessment is to identify what needs the person may have and what outcomes they are looking to achieve to maintain or improve their wellbeing. As such, it provides an opportunity to help people find ways to reduce or prevent needs from escalating, and to build upon their personal strengths, capabilities and support that might be available in their wider network or community to meet their needs.

The assessment provides a basis for:

- understanding the person's life, wishes and abilities as well as their needs
- providing information and advice to the individual and targeting prevention services
- supporting the person to find ways to meet identified needs
- determining eligibility for services or other types of support
- identifying and managing risks in line with the council's safeguarding responsibilities
- working in partnership with health and other organisations, including sharing information
- calculating the personal budget required to meet the person's eligible needs

During the assessment process, consideration must be given to ways to help the person meet the outcomes they want to achieve. The assessor must work with the person to explore their own strengths and capabilities and what support might be available from their wider support network or within the community that the person might draw upon. Formal interventions to provide care and support should only be considered after the potential to help the person to help themselves has been exhausted.

Potential support from family and friends should be considered in the light of its appropriateness and their willingness and ability to provide any additional support and the impact on them of doing so. During the assessment a 'whole family approach' must be adopted to consider the impact of the person's needs for care and support on family members or any other relevant person. This means the assessor must identify anyone who may be part of the person's wider network of care and support and consider whether they would benefit from the provision of information, advice or signposting to support services in the local community.

## 6.2 Who can have an assessment?

An assessment must be carried out for any adult or carer who appears to have any level of needs for care and support. This duty applies regardless of whether the person's needs are likely to be eligible for local authority-funded support or whether the person has the means to finance their own care.

The assessment process can be initiated by:

- an approach to the local authority or a delegated organisation by an individual or by a third party acting on their behalf
- a hospital discharge
- the local authority or a delegated organisation if it becomes aware that a person may be in need of care and support.
- *6.3 Adults in need of care and support*
- In addition to the general duty to assess, there are specific circumstances where an assessment must be carried out:
  - where an adult may need care and support before they can be safely discharged from hospital
  - where an adult in a custodial setting may have care and support needs

## 6.4 Carers

All carers are entitled to an assessment of their needs, regardless of their financial status (or that of the person they care for); whether the cared for person has eligible needs or not or if the person is being assessed for or is in receipt of continuing healthcare support. A carer's assessment must establish not only the carer's needs for support but also the sustainability of the caring role in the short and longer term.

The carer's assessment must also consider the outcomes that the carer wants to achieve in their daily life, their activities beyond caring and the impact of caring on these activities. This

includes the carer's desire and ability to work and partake in education, training or recreational activities, including having time to themselves. Carers should not be encouraged to give up existing paid employment.

## 6.5 Young Carers

If a child is involved in providing care for an adult, the adult must be offered a needs assessment and consideration given to whether the child should be referred for a young carer's assessment under section 63 of the Care Act, or a needs assessment under the Children Act 1989. Adult and Children's social care services should work together to ensure that the family's needs are assessed effectively as a whole.

When assessing an adult or carer, if it appears that a child is involved in providing care, consideration must be given to the impact of the person's needs on the young carer's wellbeing, welfare, education and development. The assessment should also take into account the parenting responsibilities of the adult. A young carer becomes vulnerable if their caring role leads to regular absences from school, affects their learning, prevents them from building friendships and relationships or undermines their wellbeing.

The question of whether the child is undertaking any caring tasks that are inappropriate must also be considered. The test of what is inappropriate will be different for each child but may include heavy lifting, emotional support, maintaining the family budget, administering medication or personal care. The assessor should take the child's own view into account when considering the appropriateness of any caring tasks.

## 6.6 Young People (Transitions)

The Care Act introduces new entitlements to transition assessment for young people and their carers. There is a duty to carry out a transition assessment for a young person or carer if they are likely to have needs once they (or the child they care for) turn 18. There are three groups who have a right to a transition assessment:

- young people under 18 with care and support needs who are approaching transition to adulthood
- young carers under 18 who are preparing for adulthood
- adult carers of a young person who is preparing for adulthood

The young person does not have to be receiving support from children's services to be eligible for an assessment. Under the Care Act 2014 there is a duty to conduct a transition assessment when it will be of 'significant benefit' to the person to do so. Significant benefit relates to the timing of when the young person is ready to have an assessment and will get the most out of the assessment process.

Under the Children and Families Act 2014, the Education, Health and Care Plan requirements for preparation for adulthood begins at 14. Adult Social Care must work with Children's Social Care to ensure young people experience a seamless transition.

## 6.7 Moving to Torbay and continuity of Care

There will be times where adults who are already receiving care and support in another local authority will want to move to TSDFT. In these circumstances it will be the responsibility of those acting on TSDFT behalf to confirm if the person has a genuine intention to move and if this is the case will become responsible for undertaking a new assessment of the person's needs. This responsibility also extends to carers if it is established that they will continue to care for the adult after the move.

Both assessments can take place before the adult moves to TSDFT, to help ensure that the right care and support is in place when they arrive. If the adult's assessment has not been completed the "continuity duty" is triggered which require TSDFT to meet any of the needs that were being met by the previous authority, from the day that the person arrives in the new area. (This also applies to the needs of any carer who will continue to care for the adult after the move).

The continuity duty will continue until those acting on TSDFT's behalf have carried out an assessment and put in place all necessary care and support the person requires on the basis of that assessment.

There are some exceptions where the assessment responsibility for an adult will usually remain with the Local Authority from where the person will be moving. These exceptions may include:

- Where the adult has requested or may require a move to supported accommodation/extra care/a shared lives scheme in TSDFT.
- Where the adult has been identified by another Local Authority as needing Local Authority funded residential or nursing care but the person has requested to move into a residential setting in TSDFT, the original authority remains responsible for both the funding and reviewing of their care and support needs.

## 6.8 Refusal of Assessment

Under section 11 of the Care Act, there is no requirement to carry out an assessment if the person (if they have capacity to refuse the assessment) does not feel they need care or does not want support provided by the local authority.

If someone who refuses an assessment appears to lack the capacity to do this or to request an assessment or to express their needs, then a mental capacity assessment should be carried out in line with best practice and the requirements of the Mental Capacity Act 2005 – hereafter referred to as the MCA.

If the person is found to lack capacity to refuse the assessment, and it is determined that a needs assessment would be in their best interests, there is a requirement to carry out the assessment. The same applies if the person is experiencing or is at risk of abuse or neglect.

It is good practice to maintain contact with the person, support them to consider the implications of their choice and to understand other choices open to them. If the person continues to choose not to have an assessment, they should be provided with details of who to contact to request an assessment should their circumstances change.

Where there is reason to believe that a person may lack capacity to refuse a needs assessment, and it has not been possible to engage them in a mental capacity assessment, and there is reasonable belief that they may be at risk from self-neglect or abuse – then a safeguarding alert should be made by the responsible organisation.

## **6.9 Proportionate Assessments**

The Care Act also requires an assessment to be carried out in a manner which is appropriate and proportionate to the needs and circumstances of the person to whom it relates. The assessment should be in proportion to the severity of need and the complexity of the situation, and should reflect the wishes of the person being assessed and address any communication needs the person may have. To ensure the assessment is proportionate, regard must be given to:

- the person's wishes and preferences and desired outcomes
- the severity and overall extent of the person's needs
- the potential fluctuation of needs

## **6.10 Initial Contact**

Information gathered about the person at the initial point of contact may take the form of a 'strengths based conversation; and may form part of a Care Act assessment. Therefore, contact staff must make clear to the person that the information gathered may be passed to the organisation responsible for undertaking their assessment (Please also see Confidentiality and Consent to Share Information Section below).

Contact staff must have appropriate information gathering skills and be able to access people with expertise to whom they can refer issues that go beyond their knowledge. They should have the support of professional social workers, occupational therapists and other relevant experts to support the identification of underlying conditions and/or to ensure that complex needs are identified early and that people are signposted appropriately.

At the point of initial contact, it must be also considered whether the person would have difficulty being involved in an assessment and whether an advocate may be required (see Advocacy section below).

## **6.11 Pausing the assessment**

Early or targeted interventions, such as universal services, a period of reablement or provision of equipment or minor household adaptations, can delay an adult's needs from progressing. If such interventions are put in place after the first contact, the assessment



process can be paused. This is to allow the intervention to take place and then to evaluate the effect on the person's needs.

### 6.12 Urgent needs

There is a power to meet urgent needs for care and support before completing an assessment. Urgent needs may also be met regardless of the person's ordinary residence. This initial response to meet urgent needs should be followed by a more detailed needs assessment and any relevant referrals.

### 6.13 Format of assessment

The assessment may take different forms according to the person's circumstances and preferences.

#### Face to face

A face-to-face assessment between the person and an assessor, whose professional role and qualifications may vary depending on the circumstances, but who must always be appropriately trained and have the right skills and knowledge.

#### Supported self-assessment

A supported self-assessment should use the same assessment materials as a face-to-face assessment but the person will complete the assessment themselves. The organisation responsible for the assessment must be sure that it is an accurate reflection of the person's needs.

#### Telephone or online

A proportionate way of assessing less complex needs or where the person is already known to the organisation responsible for the assessment. The responsible organisation must assure itself that the assessment is an accurate reflection of the person's needs.

#### Combined assessment

An adult's assessment may be completed alongside a carer's assessment and/or an assessment relating to a child so that interrelated needs are properly captured and the process is as efficient as possible. Those being assessed must consent to the assessments being combined; otherwise they must be carried out separately.

### **Joint assessment**

This refers to an assessment where relevant agencies work together to ensure that the person's needs are fully understood and to avoid the person undergoing multiple assessments. This includes assessments in a prison. Where a person has both health and care support needs, the assessor should work with health professionals to ensure the person's health and care services are aligned.

### **6.14 Supported self-assessment**

A supported self-assessment is an assessment carried out jointly by the adult or carer with care and support needs and the organisation responsible for the assessment. It places the individual in control of the process to the point where they themselves complete the assessment form. The assessing organisation remains responsible for assessing the person's needs and ensuring that the assessment is accurate and complete.

The person must be offered the choice of a supported self-assessment if they have the capacity to take part in this process and wish to do so. If the person does not wish to self-assess, the organisation responsible for the assessment must undertake it. The person should be asked to complete the same assessment questionnaire that the responsible organisation uses for a needs or carer's assessment.

In order to support the person in carrying out a supported self-assessment, the organisation responsible for the assessment must give them any relevant information it has either about the person themselves or, for a carer's self-assessment, about the individual they care for. This is so that the person completing the assessment has a full picture of their care and support history and is equipped with the same information an assessor would have when undertaking an assessment. Before sharing any information, the person's consent must be obtained. If the person lacks capacity to make this decision, information must only be shared if doing so would be in the person's best interests (Please also see Confidentiality and Consent to Share Information Section).

If the carer is a young carer, the council must consider whether the information is appropriate to be shared with the child.

If a person who would otherwise receive a specialised assessment chooses to self-assess, the assessment process must involve a person who has specific training and expertise when assuring itself that the assessment accurately reflects the person's needs.

The organisation responsible for the assessment must assure itself that the self-assessment is an accurate and complete reflection of the person's needs and must then make an eligibility determination. The person must be informed of the decision and the reasons for it. If the person disagrees with the decision, they have the right to appeal.

### **6.15 Who can carry out an assessment?**

Assessments can be carried out by a range of professionals, including registered social workers, occupational therapists, rehabilitation officers, HSCC's (health and care coordinators), support service coordinators, and adult transition workers. Anyone carrying out an assessment must have the required skills, knowledge and competence.

When assessing particularly complex or multiple needs, an assessor may require the support of an expert to carry out the assessment. Consideration should be given to whether additional expertise is required on a case-by-case basis, taking into account the needs of the individual and the skills of the assessor.

Where the assessor does not have the necessary knowledge of a particular condition or circumstance, they must consult someone who has. This means someone who - through training or experience - has acquired knowledge or skill of the particular condition or circumstance.

There are some specific groups of people that the Department of Health consider require specialised assessment:

Autism	In accordance with statutory guidance, the assessor must have specialised training in autism to assess an adult with autism.
Deafblind	A trained expert must be involved in the assessment of adults who are deafblind. This includes where an adult who is deafblind is carrying out a supported self-assessment.

### **6.16 Supporting the Person to be involved in the assessment**

The assessment must involve the person being assessed and any carer or any other person the adult wants to involve. This means that the assessor should help the person to understand how they can be involved, how they can contribute and take part and wherever possible lead or direct the process.

From their very first contact, the person must be given as much information as possible about the assessment process to ensure a personalised approach to their assessment. This information should include details about what questions will be asked in the assessment, timescales, complaints processes and access to independent advocacy, if required. The information must also be provided in an accessible format for the person so that the person's involvement in the assessment process is maximised.

From the first point of contact, consideration must also be given to whether the person, would have difficulty being involved in the assessment. If so, it must be established whether the person could be supported to be involved through changes to the assessment process. Under the Equality Act (2010), there is a duty to make reasonable adjustments to meet the needs of people with particular accessibility requirements.

## **7. ADVOCACY**

If the person would have substantial difficulty in being involved in their assessment, and adaptations to the process would be insufficient to overcome this, it must be ensured that there is an appropriate individual, such as a friend or relative, that can facilitate their involvement. If there is no-one who can fulfil this role, an independent advocate must be arranged to support and represent the person in the assessment process.

Working together for health & well-being

If the person does not have the mental capacity to decide upon an appropriate individual or advocate, then the responsible organisation must make a best interest decision as to who would be the most appropriate person to facilitate the person's involvement in their assessment.

The advocacy duty in the Care Act applies equally to people whose needs are being jointly assessed by the NHS (including Continuing Health Care) and (or on behalf of) the local authority. In these circumstances the local authority or the organisation acting on its behalf retains responsibility for arranging an independent advocate.

In determining whether a person has a substantial difficulty in being involved with the assessment, the following four criteria must be considered, in any one of which substantial difficulty may be found:

- whether the individual understands relevant information
- whether the individual is able to retain information
- whether the individual is able to weigh up information in order to fully participate
- fully and express preferences for or choose options (for example, the advantages and disadvantages of moving into a care home)

- the individual's ability to communicate their views, wishes and feelings

If it is determined that the person would have substantial difficulty being involved in their assessment, consideration should be given in the first instance to whether there is an appropriate individual who can facilitate a person's involvement in the assessment. This includes four specific considerations an appropriate individual cannot be:

- already providing care or treatment to the person in a professional capacity or on a paid basis
- someone the person does not want to support them
- someone who is unlikely to be able to, or available to, adequately support the person's involvement
- someone implicated in an enquiry into abuse or neglect or who has been adjudged during safeguarding procedures to have failed to prevent abuse or neglect

Sometimes it will not be known at an early stage of the assessment whether there is someone appropriate to assist the person in engaging. As a result, an independent advocate may be appointed only for it to be discovered later that there is an appropriate person available. The appointed advocate can at that stage hand over to the appropriate individual. Alternatively, an agreement may be reached with the appropriate individual and the advocate that it would be beneficial for the advocate to continue their role, although this is not a specific requirement under the Care Act.

On the other hand, it is possible that a person may be considered someone appropriate and who may then turn out to have difficulties in supporting the person to be involved in the process or who is later considered to be inappropriate to support the person. At that point arrangements for an independent advocate must be made.

Frequently a person will be entitled to an advocate under the Care Act and then, as the assessment process proceeds, it will become clear that there is a duty to provide an Independent Mental Capacity Advocate (IMCA) under the MCA. This will occur, for example, when, during the process, a decision needs to be taken about the person's long-term accommodation. It would be unhelpful to the individual and to the assessment process for a new advocate to be appointed at that stage. It would therefore be better that, if possible, the advocate who is appointed in the first instance is qualified to act both under the MCA (as an IMCA) and the Care Act and that commissioning arrangements enable this to occur.

There are times when an independent advocate should be provided for a person who has substantial difficulty even though they have an appropriate individual (family member, carer or friend) to support them. These are:

- where there is a disagreement between the local authority and the appropriate person whose role it would be to facilitate the individual's involvement, and the local

authority and the appropriate person agree that the involvement of an independent advocate would be beneficial to the individual.

- where a placement is being considered in NHS-funded provision in either a hospital (for a period exceeding four weeks) or in a care home (for a period of eight weeks or more), and the local authority believes that it would be in the best interests of the individual to arrange an advocate.

## 8. MENTAL CAPACITY

In carrying out an assessment, the assessor must always consider whether they need to conduct an assessment of the person's capacity to consent to any actions that may need to be taken to meet their needs. This is essential in order to ensure that any actions taken by care professionals under a subsequent support plan are protected from liability under section 5 of the MCA.

The MCA applies to anyone over 16 who is unable to make some or all decisions for themselves. Particular attention must be paid to the five statutory principles of the MCA when working with anyone who may lack capacity:

- A person must be assumed to have capacity unless it is established that they lack capacity.
- A person is not to be treated as unable to make a decision unless all practicable steps to help him do so have been taken without success.
- A person is not to be treated as unable to make a decision merely because he makes an unwise decision.
- Any decision or action made on behalf of a person who lacks capacity must be done in their best interests.
- Anything done for or on behalf of a person who lacks capacity should be the least restrictive of their basic rights and freedoms.

Individuals can appoint people to make decisions on their behalf in the event that they become unable to make their own decisions, under a Lasting Power of Attorney arrangement (LPA). The person must be over 18 and must have mental capacity to make an LPA at the time they make one.

If the person does not have capacity, the Court of Protection may appoint a Deputy to make decisions on their behalf. The Deputy may be a close friend, relative, a professional, or the local authority.

There are two types of LPA and Deputy:

- Health & Welfare

This covers decisions about day-to-day care, medical care, where to live, assessments, and the provision of community care. It can only be used when the person is unable to make a particular decision themselves.

- **Property & Financial Affairs**

This covers decisions about paying bills, bank accounts, collecting benefits, property transactions, and so on. It can be used to receive and manage a Personal Budget in the form of a direct payment on a person's behalf.

Adults who lack capacity may find it harder to communicate their needs and aspirations and may require additional support during assessment, such as the use of alternative forms of communication and information as well as access to an independent advocate.

If an adult is believed to lack the capacity to engage in decisions about how their needs will be met, the MCA guidance must be followed.

## **9. DEPRIVATION OF LIBERTY SAFEGUARDS (DOLS)**

There is a particular need to consider the person's mental capacity when either the council (or an organisation acting on behalf of the council) or an NHS body is proposing to arrange accommodation in hospital for longer than 28 days or in a care home for more than eight weeks.

If arrangements proposed for the care or treatment of someone who lacks capacity would amount to a deprivation of liberty, this must be authorised in accordance with MCA or Mental Health Act requirements. A deprivation of liberty arises if the person will be under continuous supervision and control, is not free to leave and lacks capacity to consent to these arrangements. This includes domestic settings, such as a supported living placement, if the local authority or those acting on its behalf have facilitated the arrangement. The purpose of the placement or the person's compliance or lack of objection to it are not relevant to whether there is a deprivation of liberty requiring authorisation.

If it appears that a DoLS application may be required, this should be done without delay.

## **10. CONFIDENTIALITY AND CONSENT TO SHARE INFORMATION**

In May 2018, the General Data Protection Regulation came into force, with the requirements that data is:

- Processed fairly, lawfully and in a transparent manner.
- Collected for specified, explicit, and legitimate purposes and not further processed for other purposes, incompatibly with the original purpose.
- Adequate, relevant and limited to what is necessary in relation to the purposes.

- Accurate and kept up to date.
- Kept in a form that permits identification no longer than is necessary.
- Processed in a way that ensures appropriate security of that personal data

From the point of initial contact the individual must be made aware of how the information they provide will be shared and their consent obtained. The person has the right to refuse to consent or to withdraw consent at any time. If they lack capacity, information may only be shared in their best interests in accordance with the requirements of the MCA. However, if the individual's safety or the safety of others is at risk, professionals have a duty to share confidential information in line with the Safeguarding Adults Information Sharing Policy

## 11. CONTINUING HEALTH CARE

This is available for people who need ongoing health care and meet the eligibility criteria specified in the National Framework for Continuing Health Care. The key criteria are that the person must be assessed as having a 'primary health need' and have a complex medical condition and substantial and ongoing care needs.

Continuing Health Care can be provided in any setting, including a care home, hospice or the person's home. If a person in a care home is eligible for NHS Continuing Health Care, the NHS will fund their care home fees, including the cost of accommodation, personal care and health care. If Continuing Health Care is provided to a person in their own home, the NHS will fund the costs of personal care and health care

If it appears that the person may be eligible for NHS Continuing Health Care during the assessment process, the responsible organisation must notify the Continuing Health Care Team.

## 12. ELIGIBILITY

### 12.1 Adults in need of care and support

After completing the assessment of the adult's needs it must be determine whether any of those needs are eligible for support from the council. The Care Act has established a national eligibility threshold whereby an adult's needs will meet the criteria if **all three** of the following conditions are met:

- The adult's needs arise from or are related to a physical or mental impairment or illness
- As a result of the adult's needs they are unable to achieve two or more of the specified outcomes below
- As a consequence there is, or is likely to be, a significant impact on the adult's wellbeing



### **FIRST CONDITION - Physical or mental impairment or illness**

The first condition is that an adult's needs arise from a physical or mental impairment or illness. Consideration must therefore be given whether the adult has a condition as a result of physical, mental, sensory, learning or cognitive disabilities or illnesses, substance misuses or brain injury.

### **SECOND CONDITION - Specified Outcomes**

The second condition is that consideration must be given to whether the adult is 'unable to achieve' two or more of the following outcomes:

- managing and maintaining nutrition
- maintaining personal hygiene
- managing toilet needs
- being appropriately clothed
- being able to make use of the adult's home safely
- maintaining a habitable home environment
- developing and maintaining family or other personal relationships
- accessing and engaging in work, training, education or volunteering
- making use of necessary facilities or services in the local community including public transport, and recreational facilities or services
- carrying out any caring responsibilities the adult has for a child

An adult will be deemed unable to achieve an outcome when they are:

- unable to achieve it without assistance
- able to achieve it without assistance, but achieving it causes the adult significant pain, distress or anxiety
- able to achieve it without assistance, but achieving it endangers or is likely to endanger the health or safety of the adult or of others
- able to achieve it without assistance, but achieving it takes significantly longer than would normally be expected

### **THIRD CONDITION - Significant impact on wellbeing**

The third condition is that as a result of the adult's needs and being unable to achieve two or more of the above outcomes, there is, or is likely to be a **significant** impact on the adult's wellbeing.

The term significant is not defined in the Care Act Regulations but the subsequent Care Act Guidance states that the term must be understood to have its everyday meaning. The term

significant impact should be considered as being an “important, consequential effect on a person’s daily life, their independence and their wellbeing”.

A significant impact on the person’s wellbeing could be a consequence of a single effect or of a cumulative effect. For example the person may be unable to achieve two or more of the eligibility outcomes and this affects at least one of the area of their wellbeing in a significant way. Alternatively, the person may have eligible needs across several of the eligibility outcomes, perhaps at a relatively low level, but as these needs affect the individual in various areas of their life, the overall impact on the person’s wellbeing is significant.

How wellbeing is interpreted will depend on the individual, their circumstances and their priorities. Wellbeing is a broad concept applying to several areas of life, and needs affect people in different ways. Therefore, needs that affect one person significantly may not have a significant impact on another. Assessments and the application of eligibility criteria must therefore be individual to the person’s presenting needs and circumstances.

## 12.2 Needs met by carers

The eligibility determination will be based solely on an adult’s needs and how these impact on their wellbeing. Where the adult has a carer, information on the care they are providing should be captured during the assessment but cannot be used to influence the eligibility determination. This is to ensure that an appropriate response can be provided at the right time to meet the level of needs, whether or not the carer is able to continue providing care.

## 12.3 Carers

Carers can be eligible for support in their own right, and their eligibility does not depend on whether the person they care for has eligible needs. The Care Act has established a national eligibility threshold whereby a carer’s needs will meet the eligibility criteria if **all three** of the following conditions are met:

- The needs arise as a consequence of providing **necessary** care for an adult
- The carer’s physical or mental health is deteriorating or is at risk of doing so or the carer is unable to achieve any of the outcomes specified below
- As a consequence there is, or is likely to be, a significant impact on the carer's wellbeing.

### **FIRST CONDITION - Needs arising as a consequence of providing necessary care for an adult**

The first condition that must be satisfied is that the carer’s needs arise as a consequence of providing ‘necessary’ care for an adult. If the adult is capable of meeting such care and support needs themselves, the carer may not be providing ‘necessary’ care and support.

**SECOND CONDITION -Needs arising because of deteriorating physical or mental health or the inability to achieve specified outcomes**

The second condition that must be satisfied is that the carer's physical or mental health is deteriorating or is at risk of doing so, or the carer is unable to achieve any of the following outcomes:

- Carrying out any caring responsibilities the carer has for a child
- Providing care to other persons for whom the carer provides care
- Maintaining a habitable home environment in the carer's home (whether or not this is also the home of the adult needing care)
- Managing and maintaining nutrition
- Developing and maintaining family or other personal relationships
- Engaging in work, training, education or volunteering
- Making use of necessary facilities or services in the local community, including recreational facilities or services
- Engaging in recreational activities

A carer will be deemed unable to achieve an outcome when they are:

- unable to achieve it without assistance
- able to achieve it without assistance but achieving it causes the carer significant pain, distress or anxiety
- Is able to achieve it without assistance but achieving it endangers or is likely to endanger the health or safety of the carer or of others

**THIRD CONDITION - Significant impact on wellbeing**

The third condition that must be satisfied is that there is or is likely to be a significant impact on the carer's wellbeing as a consequence of needs arising due to provision of necessary care for an adult and either the carer's physical or mental health is or is at risk of deteriorating, or the carer is unable to achieve any of the outcomes above.

**12.4 Fluctuating needs**

Adults and carers may have fluctuating needs which are not always apparent at the time of their assessment but may have arisen in the past and are likely to arise again in the future. In these circumstances the responsible organisation will consider the persons needs over an appropriate period of time to ensure that all their needs have been accounted for when eligibility is being determined.

**12.5 Power to meet needs that are not eligible**

There may be circumstances where an individual does not meet the eligibility criteria (i.e. they only have one outcome that is having a significant impact on their wellbeing). In these cases the severity of the impact on the person must be considered. If the person is deemed

to be at significant risk of harm if a service is were not to be provided then the case should be sent to the relevant council commissioner for consideration.

### **13. ORDINARY RESIDENCE**

#### **13.1 Determining ordinary residence**

Following the eligibility decision the responsible organisation should establish whether the person meets the ordinary residence requirement and has, as a consequence, an ongoing duty to meet the person's assessed eligible needs.

In broad terms, where an adult is living in TSDFT voluntarily, and for settled purposes, whether for short or long duration, he or she will be ordinarily resident in TSDFT. For carers, the person they care for must be ordinary resident in TSDFT.

Ordinary residence also extends to residential care and nursing home placements, shared lives schemes and in some circumstances supported living/ extra care housing arrangements, when funded by TSDFT outside of the area. Where a person lacks capacity to decide where to live, a best interest decision about their accommodation should be made under the Mental Capacity Act 2005.

The determination of ordinary residence must not delay the process of meeting needs. In cases where ordinary residence is not certain, the responsible organisation should meet the individual's needs in the first instance, and then resolve the question of residence subsequently. This is particularly the case where there may be a dispute between two or more local authorities.

#### **13.2 Continuing Healthcare**

Where a person is placed in a care home (or other accommodation funded by the NHS) for the purpose of receiving NHS continuing health care, they continue to be ordinarily resident in the local authority area where they were ordinarily resident before entering the NHS accommodation. Where a person ceases to be eligible for Continuing Health Care, but still needs to remain in their care home, or to be provided with accommodation elsewhere, the local authority where the person was ordinarily resident immediately before being provided with NHS accommodation will be responsible for arranging care and support to meet the person's eligible needs, subject to any financial assessment.

#### **13.3 Section 117 Aftercare**

The duty on local authorities to commission or provide mental health after-care under section 117 of the Mental Health Act 1983, usually rests with the local authority for the area in which the person was ordinarily resident immediately before they were detained under the 1983 Mental Health Act, even if the person becomes ordinarily resident in another area after leaving hospital.

For example, if a person is ordinarily resident in local authority area (A) immediately before detention under the 1983 Act, and moves on discharge to local authority area (B) and moves

again to local authority area (C), local authority (A) will remain responsible for providing or commissioning their after-care. However, if the patient is subsequently detained in hospital for treatment again, the local authority in whose area the person was ordinarily resident immediately before their subsequent admission (local authority (B) or (C) will be responsible for their after-care when they are discharged from hospital.

## **13.4 Transitions**

Following a Supreme Court Judgement on 8th July 2015 (Case ID UKSC 2014/0092) it has been determined that once a Council has responsibility for accommodating a child this responsibility is likely to continue into adulthood should they remain mentally incapable of making their own accommodation decisions no matter where they are geographically accommodated.

## **13.5 Further Guidance**

The full provisions in the Care Act 2014 in regards to ordinary residence are detailed and as such are outside the scope of this policy. Further guidance can also be taken from the Care and Support Statutory Guidance: Chapter 19: Ordinary Residence.

If the ordinary residence of the person remains uncertain then all related information to the person's residency and care and support needs should be sent to the relevant council commissioner for a decision.

## **14. INFORMING THE PERSON**

### **14.1 Providing a copy of the assessment**

Following the assessment, the person must be given a copy of their assessment and eligibility outcomes, which must include their views. A copy must also be shared with anybody else that the person asks for it to be shared it with.

### **14.2 Unmet eligible needs**

If the person has been assessed as having unmet eligible needs, the assessor must:

- Agree with the person which of their eligible unmet needs they would like the council to meet. The adult may choose to arrange alternative services themselves to meet some needs or may not want a service from the council or organisations acting on its behalf. A person who has savings above the local authority financial threshold has the right to request that services (but not residential care) are arranged by the council or organisations acting on its behalf.
- If the person wants support that might be funded the council, consider how to meet those needs and if a chargeable service is involved, initiate a financial assessment.
- Establish whether the person meets the ordinary residence requirement.

An adult must be ordinarily resident in TSDFT. In the case of a carer, the person they care for must be ordinarily resident in TSDFT.

Where the person has unmet eligible needs and support planning is to proceed, the person should be provided with an “Indicative” Personal Budget. The indicative amount is to be recorded on the person’s assessment documentation.

### **14.3 Met eligible needs**

If the person has been assessed as having eligible needs but these needs are being fully met the assessor must:

- Record on the assessment documentation how the person’s needs are being met.
- Agree with the person (and if relevant their carer) how the responsible organisation can keep under review its duty to meet any unmet eligible needs (for example, if a carer can no longer meet some or all of the person’s eligible needs, or if alternative services cease or do not adequately meet the person’s eligible needs).
- Record this decision on the assessment documentation.

### **14.4 When there are no eligible needs**

Where none of the person’s needs meet the eligibility criteria, the organisation responsible for the assessment must give them written advice and information about what can be done to meet or reduce the needs or what can be done to prevent or delay the development of needs for care and support in future.

People who have needs that fall below the eligibility criteria may qualify for help from a range of other services, including health, housing, benefits, education, training, employment, transport and leisure. Local voluntary services, community groups and networks may also be able to help people. People must be given information about alternative sources of support, and advice about how to access them.

If a person’s condition is likely to deteriorate without support so that their needs will increase, the assessor should consider whether the person would benefit from preventative interventions or services. This may involve referring the individual to another service or providing advice or giving assistance to access support.

## **15 COMPLAINTS AND APPEALS**

All reasonable steps to limit appeals or disputes through effective assessment practice and transparency in decision-making should be taken. In addition, people should be kept informed of the timescales that are likely to be involved in different stages of the process. Anyone who remains dissatisfied with a decision made should be informed that they can complain via the Feedback and Engagement Team ([tsdft.feedback@nhs.net](mailto:tsdft.feedback@nhs.net); telephone 0800 0282037)