

## Factsheet 41

# How to get care and support

November 2021

### About this factsheet

This factsheet explains the process for:

- obtaining a local authority assessment of your needs, whether you are someone who needs care and support or you 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 overall cost and any contribution you have to make.

This factsheet covers how you should be treated if you must pay the full amount for care and support services following a financial assessment. This is known as being a '*self-funder*'. It also explains what should happen if you are found to be ineligible for services.

Age UK produces factsheets explaining other aspects of the social care system in more detail. You can call Age UK Advice for copies of these factsheets or go to [www.ageuk.org.uk/services/information-advice/guides-and-factsheets/](http://www.ageuk.org.uk/services/information-advice/guides-and-factsheets/)

The information in this factsheet is correct for the period November 2021 to November 2022.

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. Contact details can be found at the back of this factsheet.

Contact details for any organisation mentioned in this factsheet can be found in the *Useful organisations* section.

# Contents

<b>1</b>	<b>Sources and terms used in this factsheet</b>	<b>4</b>
<b>2</b>	<b>An overview of the process</b>	<b>5</b>
<b>3</b>	<b>Getting a needs assessment</b>	<b>6</b>
3.1	What you need to do first	6
3.2	The assessment duty	6
3.3	What to expect from the assessment	7
3.4	Types of assessment	7
<b>4</b>	<b>The eligibility criteria for care and support</b>	<b>8</b>
4.1	Carers - support	10
4.2	Case examples	11
4.3	What happens if I do not meet eligibility criteria?	11
4.4	Mental capacity and the duty to meet needs	12
<b>5</b>	<b>Care and support planning</b>	<b>12</b>
5.1	What your care and support plan should include	13
5.2	How will my eligible needs for care or support be met?	14
5.3	Self-funders' ' <i>right to request</i> ' having needs met	14
<b>6</b>	<b>Personal budgets and direct payments</b>	<b>16</b>
6.1	Calculating your personal budget	16
6.2	Direct payments	17
<b>7</b>	<b>Paying for care and support services</b>	<b>18</b>
7.1	Free services	18
<b>8</b>	<b>Types of care</b>	<b>19</b>
8.1	Care in your own home	19
8.2	Care homes	19
8.3	NHS Continuing Healthcare	20
<b>9</b>	<b>Preventing and reducing needs</b>	<b>20</b>
<b>10</b>	<b>Review of services and needs</b>	<b>21</b>
10.1	Challenging a reduction in care and support	21

<b>11 Information, advice and advocacy</b>	<b>23</b>
11.1 The independent advocacy duty	24
<b>12 Complaints and safeguarding</b>	<b>25</b>
12.1 How to challenge decisions and complain	25
12.2 Safeguarding from abuse and neglect	25
<b>13 Moving from one local authority area to another</b>	<b>26</b>
<b>14 Ordinary residence and local authority duties</b>	<b>27</b>
Useful organisations	29
Age UK	31
Support our work	31

# 1 Sources and terms used in this factsheet

This factsheet is based on the *Care Act 2014* (*‘the Act’*), its regulations and *Care and Support Statutory Guidance* (*‘the guidance’*), which came into force in April 2015.

The Act, its regulations and statutory guidance place **duties** and **powers** on local authorities. Duties **must** be carried out. Powers give the local authority the **choice** to do, or not to do, something, as long as they genuinely weigh up the facts and take a flexible approach.

The most relevant parts of the Act are section 1 *‘Promoting individual wellbeing’*, section 8 *‘How to meet needs’*, sections 9-13 *‘Assessing needs’*, sections 18-23 *‘Duties and powers to meet needs’* and sections 24-30 *‘Next Steps after assessments’*.

Key regulations are *the Care and Support (Assessment) Regulations 2014* (*‘the assessment regulations’*), *the Care and Support (Eligibility Criteria) Regulations 2015* (*‘the eligibility regulations’*), and *the Care and Support (Charging and Assessment of Resources) Regulations 2014* (*‘the charging regulations’*).

Relevant parts of the guidance include chapter 1 *‘Promoting wellbeing’*, chapter 6 *‘Assessment and eligibility’* and chapter 10 *‘Care and support planning’*.

## Local authority and social care services

References to a *‘local authority’* refer to the adult social services department of the 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 the 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 or arranging services to meet your eligible needs. They may also have a duty to provide financial support to meet your needs, subject to a financial assessment.

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

## NHS care

If you need health services, approach your GP, district nurse, or other health worker. This is usually free at the point of delivery.

If you need both health and social care support, the local authority and the NHS should work together in an integrated manner. Factsheet 44, *NHS services* describes the type of health services that are available.

## 2 An overview of the process

### Getting a needs assessment

Help from the local authority begins with a needs assessment. You can ask for the assessment yourself, or a family member, friend, or a professional such as your GP can do this for you with your permission.

A local authority has a **duty** to carry out the assessment for you in almost all cases and cannot refuse because of how much money you have. It must take account of all aspects of your needs. Once the assessment is completed, you must be provided with a copy.

If you have a carer, the authority must involve them in your assessment if you want. A carer has a right to their own carer's assessment, designed to take account of any support they need to provide care to you.

### Eligibility criteria

After a needs assessment, the local authority must decide whether your needs meet the eligibility criteria for care and support. The carer's eligibility criteria are slightly different to the adult's. If you are found to be ineligible after the local authority assessment, their prevention and advice duties can help you stay independent for as long as possible.

### Local authority duty to meet needs

If you do have eligible needs, the local authority must decide whether it has a legal duty to arrange or provide care and support to meet those needs. This can apply if you are entitled to local authority funding, or if services must be provided for free. If you are a self-funder, they must meet your eligible needs if you lack mental capacity to arrange your care and have no one able to help you. The duty also applies to self-funders who ask the local authority to arrange non-residential care services.

### The financial assessment

The local authority carries out a financial assessment to establish how much you must contribute to the cost of providing services to meet your assessed needs. Some people must meet the full costs. The authority must follow the charging regulations when carrying out the financial assessment and must clearly explain any charges.

### Care and support plan

If the local authority is going to meet your needs, they must produce a care and support plan. They must involve you in the process as much as you want and give you a copy once complete.

The plan sets out the level and type of help you need, including help from a carer or community support, as well as care services. The plan should say how support will be arranged and funded, the overall costs, and your financial contribution.

## 3 Getting a needs assessment

### 3.1 What you need to do first

The first step in getting help from the local authority is to ask for a needs assessment. There should be a phone number to start the process on their website or you can apply in writing.

You can phone to request the assessment yourself. Alternatively, a friend, relative, or health professional such as a nurse or your GP, can make the request for you, with your permission.

The local authority must provide you with accessible information about the assessment process. Wherever possible, this must be provided before the assessment takes place. You can also visit an organisation like Age UK or Citizen's Advice for advice and information.

### 3.2 The assessment duty

The local authority has a **duty** to carry out the needs assessment, regardless of your level of needs and finances.

The assessment duty applies where it *'appears'* to the local authority that you *'may have needs for care and support'*. As this is a low threshold, the local authority nearly always has a duty to carry out an assessment for an older person who may have some level of need.

#### How quickly should an assessment take place?

The local authority is allowed to be flexible in deciding how soon they need to carry out an assessment, but **must** base its decision on your individual needs and circumstances. It has a duty to do the assessment as soon as is **appropriate and reasonable** given your individual needs.

The local authority may seek to prioritise some requests over others, meaning it is important to explain as much as you can about your needs and circumstances, especially if you require urgent help.

You can ask the local authority to explain how soon your assessment will take place. If you feel you will be waiting too long, ask the local authority to explain its decision and make a complaint if needed.

#### Urgent needs

If you have an urgent need for help, the local authority has the power to put services in place immediately, without waiting to do an assessment, which it must carry out as soon possible afterwards.

For example, if there is a safeguarding issue, or someone's condition deteriorates rapidly, the local authority should provide an immediate response and meet the person's care and support needs there and then.

### 3.3 What to expect from the assessment

Your assessment **must**:

- take account all of your needs, including any already met by a carer
- be carried out by staff suitably qualified to assess your individual needs and include input from a specialist, like a doctor, if appropriate, and
- consider the impact on your wellbeing of any needs you have and the outcomes you want to achieve in daily life
- involve you as much as you want
- involve your carer or anyone else you choose
- continue long enough to account for your needs overall, with an understanding that your needs might change from day to day.

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
- your carer works or wishes to
- your carer does, 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 its potential duty to meet your needs. 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.

### 3.4 Types of assessment

Assessments can be:

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

The local authority can choose any type of assessment but must show its choice is suitable for your individual needs.

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.

If there is concern about your mental capacity to make a decision, or your situation is complex for other reasons, the local authority should generally offer you a face-to-face assessment and avoid the use of phone, online or self-assessments.

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 professionals to work together.

Joint assessments usually assess the needs of you and your carer together. This can work well, but you may feel you would benefit from the chance to talk to the assessor in private.

### Useful tips

- Resist the temptation to say things are better than they are or that you are managing when in reality you are struggling.
- Your wellbeing needs, such as your social and emotional needs, may not be considered unless you point them out and are clear about how important they are to you. See the list of wellbeing factors in section 4.
- Once the assessment is finished, ask for a copy of the assessment. Check all of your needs have been recorded, including the impact on your wellbeing. If you feel the assessment does not reflect the true picture of your needs, ask the local authority for a reassessment and make a complaint if needed.

### Can I refuse an assessment?

You are entitled to refuse a needs assessment, but the local authority must assess you if you later change your mind. 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
- are experiencing, or at risk of, abuse or neglect.

## 4 The eligibility criteria for care and support

**If your assessed needs meet eligibility criteria, the local authority must determine whether it has a legal duty to meet those needs.**

You meet the eligibility threshold if:

- you have **needs** that arise from, or are related to, a physical or mental impairment or illness
- those needs mean you are **unable** to achieve **two or more outcomes** in the list below, and
- that results, or is likely to result, in a **significant impact** on your **wellbeing**.

These eligibility criteria apply to all adults with care needs. For the eligibility criteria that apply to carers, see section 4.1.



## 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.

## The list of outcomes:

- (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 'wellbeing'

Wellbeing is a very broad term. Its meaning under the Act 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.

The guidance says there is no hierarchy of wellbeing needs – each area of wellbeing should be considered as having equal importance.

The local authority must provide you with a written record of its decision about whether you meet the eligibility criteria, including the reasons for the decision.

## **‘Significant impact’ on wellbeing**

The Care Act does not define what the term ‘*significant impact*’ means. However, the guidance says:

- 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 the authority must consider whether your needs have an ‘*important, consequential effect*’ on your daily life, independence, and wellbeing.

The 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 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 for others.

In recent cases, the courts have confirmed that an assessment is unlawful if it does not assess the impact of needs on wellbeing.

## **4.1 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 for carers 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.

See section 4 for the ‘*wellbeing*’ factors.

## 4.2 Case examples

These examples explain how you can try to make sure your needs and your wishes are communicated to whoever assesses you.

### 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 should 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.*

## 4.3 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 information and advice about meeting, reducing, and preventing needs. The information and advice must be tailored to your individual situation.

This means you should not be left alone to cope without information and advice to help you manage your care needs better, or to 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 and support. As this is the authority's choice, you may find they are unwilling to do so.

The local authority may agree to do this, for example, 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.

## 4.4 Mental capacity and the duty to meet needs

If you lack mental capacity to make your own care arrangements, and have no one able to act on your behalf, the local authority must arrange or provide the services necessary to ensure your eligible needs are met, even if you are a *'self-funder'*.

The duty applies when an adult *'lacks capacity to arrange for the provision of care and support'* and *'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'*.

An *'authorised'* person means someone with authority to act for you, such as a Lasting Power of Attorney or deputy.

As mental capacity is *'decision specific'*, you may, for example, be able to decide whether you wish 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.

## 5 Care and support planning

If the local authority has a duty to meet your needs, or is choosing to do so, they must prepare a *'care and support plan'*. This must specify which of your needs they will meet, how they will do so and, through setting a *'personal budget'*, how much it will cost overall.

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 necessarily mean the whole package of care you need is arranged or funded by the local authority itself, or that a particular service must be provided.

Having identified your eligible needs (without reference to your carer if you have one), the authority explores with you and your carer the ways in which those needs could be met. The local authority does not have a duty to meet any needs your carer is willing and able to meet.

Other needs might be met by universal community services. These are services available to people regardless of whether they meet eligibility criteria. These can include joining a walking group, a lunch club, help from a local clinic, voluntary organisation, community centre or faith group.

The local authority must meet any eligible needs that cannot be met by other options. Through setting a *'personal budget'*, it must specify the overall cost of meeting your eligible needs and how much money, if any, you must contribute to the cost following a financial assessment.

See section 6 for further information about the personal budget.

Personal budgets and direct payments

## 5.1 What your care and support plan 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 information is available in a way that is meaningful to you, and you have support and time to consider your options.

The emphasis in the guidance is on empowerment through involvement and the exercise of choice. You should expect to work very closely with adult social care, if you want to do so, in developing your 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 amount
- 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 should give you a written record of the decision and the reasons for it. This can be because your needs do not meet the care and support eligibility criteria. It can be because you require a care home and the financial assessment finds you are a '*self-funder*' and you are able to arrange your own care and support, or have someone able to do so on your behalf.

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 5.3.

#### Note

Section 25 of the Act requires the local authority to give you a copy of your care and support plan. It must also give a copy to your carer and anyone else you choose.

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

**The 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. These 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 6). A care plan can be delivered by:

- the local authority providing or arranging services for you
- the local authority delegating to another organisation, called a '*broker*' or a care coordinator, who works with you to make arrangements, or
- direct payments to buy the care you want yourself. This option is only for non-residential care services, or short-term care in a care home.

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. If you have any concerns or your circumstances change, you can ask for a review, see section 10.

## 5.3 Self-funders' '*right to request*' having needs met

If the financial assessment concludes you are a '*self-funder*' because your capital exceeds £23,250, the local authority can expect you to arrange your own care and support, as long as you have mental capacity to do so or have someone able to help you.

However, you can ask the authority to make the arrangements under the '*right to request*'. Once the request has been made, the authority has a legal duty to meet your eligible needs, though you will not be entitled to any financial assistance. It has the power to charge an arrangement fee for doing this.

The guidance notes a request for support can be made for a variety of reasons, such as 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 *'right to request'* applies to all care and support services, except care in a care home. The authority can choose to arrange a care home for a self-funder on request, but it does not have a duty to do so. If they do agree to make the arrangements, no arrangement fee is charged.

A separate duty to meet eligible needs applies if you lack mental capacity and have no one able to help you. See section 4.4.

### **The 'right to request' 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 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 cannot arrange your own care home placement for any reason, there is no legal duty requiring a local authority to arrange care on your behalf.

They do have a power to do so if they wish. The guidance limits the *'right to request'* duty to non-residential care. As such, you will need to set out the factors as to why you want the local authority to arrange your care home place.

In reality, if you are at risk of abuse or neglect if you do not receive assistance to arrange care, the local authority should exercise this power under its safeguarding duties.

In exercising its discretion, the local authority must take into account broader public law concepts such as a general duty of care and the Human Rights Act 1998.

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.

If the local authority refuse to assist you, you can challenge that decision through the formal complaints procedure. See section 12.1 information.

## 6 Personal budgets and direct payments

The personal budget is the ‘*cost to the local authority*’ of meeting your needs. It specifies what you must pay towards that cost following the financial assessment, and what their financial contribution is.

Your care plan must include a personal budget if you are an older person with care needs, or a carer. It can be provided in one of 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. This only applies to non-residential care services and short-term care in a care home.

### 6.1 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 your 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 amount.

The 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 eligible needs. 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.



## 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 used as an estimated figure, which must be checked against the reality of your situation.

## Carers

If you are a carer entitled to support, you should receive an individual personal budget sufficient to meet your eligible support needs. It should not be a flat rate standard amount but tailored to your situation.

## The use of funding panels

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

Guidance says they can be a necessary expert checking and governance mechanism, for example for signing off expensive or unique 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.*

If you are told that your case is going to panel, you should ask why this is needed and you may want to ask to attend the panel meeting. Ask for the panel's decision in writing. You can raise a formal complaint to challenge the decision if, for example, your care package has been reduced in such a way that means your needs will no longer be met.

## 6.2 Direct payments

You can choose to receive direct payments if your needs are met through non-residential care services or, for limited periods, short-term care in a care home. Money is paid directly to you or your representative by the local authority, so you can choose and buy care services required to meet your needs.

The amount paid derives from your personal budget, which must be sufficient to meet your eligible needs. For some people, this provides freedom to meet their needs in the way that suits them best. It can bring additional responsibilities of recruiting care staff and becoming an employer. The authority should offer you advice about this.

Direct payments are not for everyone and you can choose whether you want them, or you want care and support arranged on your behalf by the local authority or a third party.

For more information, see factsheet 24, *Personal budgets and direct payments in social care*.

## 7 Paying for care and support services

With some exceptions, the local authority has the power to charge a contribution towards the cost of any care and support services they provide or arrange to meet your needs.

Any charge must be subject to a financial assessment. Your income and capital (e.g. savings) are assessed to work out what contribution, if any, you must make. If your capital exceeds £23,250 or you have sufficient income to meet the full cost of your care, you are a 'self-funder' meaning you must meet the full cost of services.

The local authority must comply with the charging regulations when carrying out the financial assessment. Some types of income and capital are disregarded and there are minimum income levels you should not be required to go below, if you are required to pay towards services.

Your contribution must be specified in the personal budget as part of your care and support plan and are usually worked out on a weekly basis.

For more information see factsheet 46, *Paying for care and support at home*, factsheet 10, *Paying for permanent residential care* and factsheet 58, *Paying for short-term and temporary care in a care home*.

### 7.1 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. You may be entitled to help with the cost of a more expensive adaptation through a means tested Disabled Facilities 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.

Depending on your needs, it may be provided by the NHS or the local authority. It is provided for free, usually up to a maximum of six weeks. For more information, see factsheet 76, *Intermediate care and reablement*.

- **Mental health** the local authority cannot charge you for 'after-care' services provided or arranged under section 117 of the *Mental Health Act 1983*.

'After care' applies if you have been previously detained under section 3 or the criminal provisions of the 1983 Act and aims to reduce the risk of readmission to hospital.

## 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 supporting your caring role and helps sustain that role. This can include training to help you combine work with your caring role.

The local authority has a duty to promote the local market so there is a range of service providers and *'a variety of high quality services to choose from'*.

### 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 a chair, and also possibly domestic tasks or other activities 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 get depends on your particular needs.

Care assistants can be provided by an agency or you may choose to employ a personal assistant through a direct payment. 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. The 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 Care homes

There are two types of care homes: **residential and nursing**. The local authority must specify which is appropriate to meet 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 care 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 paying towards the cost of care you need from a registered nurse.

You cannot be forced to move into a care home against your will, provided you have mental capacity to make this decision for 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.

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*.

## 8.3 NHS Continuing Healthcare

If your needs are primarily for healthcare rather than social care, you may be eligible for NHS Continuing Healthcare. It can be provided in any setting, including your own home, and all services provided are free.

As you must be assessed for this separately, the local authority must notify the relevant NHS body if it appears you may be eligible when carrying out a needs assessment. See factsheet 20, *NHS continuing healthcare and NHS-funded nursing care* for more information.

## 9 Preventing and reducing needs

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.

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 not being met, and
- carers with support needs that are not being met.

Local authorities should provide written information if you receive preventative support. This must specify your needs, why the action is proposed, expected outcomes, timescale, and what happens next. You may be offered one or more preventative services.

They have a discretionary power to charge for some preventative services. Any charge should be affordable to you.

Small home adaptations, short-term rehabilitation (*'intermediate care and reablement'*) services and community equipment are included within the definition of preventive services as well as those required to meet eligible needs. The authority cannot charge for these services.

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.

## 10 Review of services and needs

Your care and support plan must be kept under review. Reviews should happen at least every 12 months, with a light touch review at six to eight weeks after a new or revised care or support plan is introduced and services start. 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, in response to a crisis, or a *'reasonable request'* from you or your carer. A reasonable request can be prompted by a 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 your needs *'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.

### 10.1 Challenging a reduction in care and support

A review to your care and support plan may result in your care package being reduced or removed. The authority may say it no longer funds a particular service, or that your current care package is too costly. This commonly involves a reduction in the level of your personal budget, resulting in you receiving less care and support.

This may leave you without care services you rely on. The information in this section explains the process the authority must follow and what you can do to challenge any decision you disagree with.

#### Review of your care and support plan

The local authority should not change the care and support you receive unless it has first conducted a review of your needs and care and support plan showing this is necessary.

The guidance says *'it should not be possible to decide whether to revise a plan without a thorough review to ascertain if a revision is necessary, and in the best interests of the person'*.

The authority must have clear, justifiable reasons why it believes your situation has changed in such a way that requires a revision of your care and support plan. The guidance is clear that a review should not be used to arbitrarily reduce your care and support or personal budget.

An arbitrary reduction to the personal budget would be unlawful, as the amount must always be appropriate to meet your needs and *'any reduction...should be the result of a change in need or circumstance'*.

### **Revision of the plan and needs assessment**

If, following a review, the authority believes a revision of your care and support plan is necessary, it must carry out a needs assessment before any changes are made. This should build on what is already known about you, rather than starting from the beginning.

This is a crucial part of the process, as any revised care package must meet your eligible needs identified in the assessment. It is unlawful for the authority to reduce your care and support in such a way that your eligible needs are no longer met.

The assessment must appropriately take into account your needs for care and support, including those relating to your wellbeing. The local authority has a general duty to promote wellbeing, including during the assessment process and deciding how to meet your eligible needs.

In line with the Act, the authority must regard wellbeing as individual to you and consider, for example, your mental health and emotional wellbeing, family and other personal relationships and your contribution to society. See section 4 for the full list of wellbeing factors.

Once a new needs assessment is complete, you have a right to a copy. Ask for this so you can check whether the authority has taken full account of your needs. Request a reassessment if needed. If you are satisfied the assessment fully reflects your needs, use this to challenge the authority if you feel your revised care plan fails to meet your needs.

The authority must explain how any revised care plan meets your eligible needs. If your personal budget has been reduced, the authority must show how the new figure is sufficient to meet your eligible needs. It must set out how it arrived at your personal budget figure.

### **Your involvement in the process**

The authority must allow you to be involved as much as you want in the process of assessing your needs and reviewing and revising your care and support plan. Changes must be clearly explained and you should be given the opportunity to raise concerns before they are put in place.

If you want someone to support you during the process, such as a relative or friend, the authority must allow them to be involved. If you do not have someone to support you, it may have a duty to provide you with an advocate, see section 11.1.

## Challenging the decision

If your revised care and support plan leaves you without care and support you rely on, you can challenge the decision. You may feel the local authority has failed in its duty to meet your eligible needs or has not followed the correct process when revising your care and support plan.

When challenging a decision, it is important to act quickly. Ask for a copy of your needs assessment and care and support plan. Try to support what you are saying with evidence as far as possible.

Refer to any evidence from your GP or other health professionals that shows you have particular needs, or there would be a significant impact on your wellbeing if services are withdrawn.

Be as specific as possible about why you think particular services are essential to ensure your needs are met. For example, if the authority proposes reducing support to help you access the community or to maintain relationships with family and friends, use evidence from your needs assessment to highlight the impact on your wellbeing if this leaves you isolated at home.

You can try to resolve the situation informally at first. Pointing out the impact of withdrawing services or reminding the authority of its duties under the Care Act may be enough to make them change the decision. If not, make a formal complaint to challenge the decision, see section 12.

You can seek legal advice about a legal challenge. Legal aid is available for challenging these types of decision, subject to a financial means test. Any legal challenge to the authority must be made within three months.

For information about legal aid, see factsheet 43, *Getting legal and financial advice*.

## 11 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 and 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, proportionate and designed so you can understand it. The authority must ensure information is available at the point you need it, for example when your needs are assessed.

## 11.1 The independent advocacy duty

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.

The 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) able and willing to help you engage in the process.

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 experiencing these difficulties, you may be seen as an appropriate person, so an advocate is not necessary.

However, the person you are advocating for must agree with this, provided they have mental capacity to do so and you must be willing to do it. If they lack capacity to make the decision, the local authority must be satisfied you will act in their best interests.

If you do not want someone, such as a family member or carer, to help you, the local authority must respect your decision and appoint an advocate if needed. The local authority may also need to appoint an advocate if the person helping you disagrees with what you want, for example about where you live.

The advocate must be properly trained, of good character and completely independent of the local authority. If you are unable to challenge a local authority decision yourself, the advocate must challenge any decision they believe is inconsistent with the Act's wellbeing principles.

This builds on an existing scheme (under the *Mental Capacity Act 2005*) for people who lack mental capacity to make decisions about care and support. For more information about Independent Mental Capacity Advocates, see section 8 of factsheet 22, *Arranging for someone to make decisions on your behalf*.



## 12 Complaints and safeguarding

### 12.1 How to challenge decisions and complain

It is not always possible to reach agreement with the 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 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 or you are being forced into a position where you have to do more caring than you are able or willing to do.

#### Using the complaints procedure

If you cannot resolve the issue informally, consider making a formal complaint. The authority must provide you with information and advice about its complaints procedure.

Be clear about what you are complaining about and what outcomes you want to happen as a result of your complaint.

If your formal complaint is not resolved through the authority's complaints procedure, you can take it to the Local Government and Social Care Ombudsman.

You can consider taking legal action. It is important seek legal advice and to act quickly. A legal challenge must be brought within three months.

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

### 12.2 Safeguarding from abuse and neglect

If you, or someone you care for, is experiencing, or is at risk of, abuse or neglect, you should raise a safeguarding concern with the local authority.

For more information, see factsheet 78, *Safeguarding older people from abuse and neglect*.

## 13 Moving from one local authority area to another

Your rights when moving to another local authority depend on whether you are receiving care in your own home or in accommodation arranged by the local authority, such as a care home or extra care housing.

### Care in your own home

If you have an existing care plan and support in place and you want to move to a different area in England, 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 to:

- provide appropriate information to you and your carer (e.g. about how the care system works in the new area) and notify the first authority, which must provide a copy of your care plan and other documents
- assess your needs and agree a care and support plan to ensure services are in place to meet your eligible needs when you move to the new area
- 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 put in place services to meet your eligible needs until it completes its own assessment and care planning and puts provision in place. This means you should not have gaps in your care support when you move.

The guidance advises you should be able to take any equipment to your new home. This includes items like a special bed, for example.

If you wish to move to Northern Ireland, Scotland, or Wales, you do not have the same rights under the Act. However, the authorities 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.

### Care homes and other accommodation – the ‘*deeming principle*’

Sometimes the local authority for the area you live in (area A) may arrange for you to move into a care home in a different local authority area (area B).

This can be to meet a specific eligible need, for example 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 and the local authority agrees to make the arrangement.

If your placement is arranged by the local authority in area A, they remain responsible for meeting your care needs and any financial support you qualify for, even though you have moved to area B. You are 'deemed' to still be resident in area A.

The deeming principle also applies to supported living accommodation, such as extra-care housing. The same rules apply if the local authority arranges a care home for you in Northern Ireland, Scotland, or Wales. The English local authority remains responsible for your care.

If you make your own arrangements not involving the local authority to move to a care home or supported living accommodation in another area, the deeming principle does not apply to you. You are treated as being the responsibility of the new local authority if you later require support. This commonly applies if you are a self-funder able to make necessary arrangements yourself or have someone able to help you.

## 14 Ordinary residence and local authority duties

**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 guidance tells local authorities to have regard to the case of *Shah v London Borough of Barnet (1983)* when determining ordinary residence.

In this case, 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.

If you lack mental capacity to choose where to live, the local authority should take the approach in the *Shah* case, but disregard the fact that, due to your lack of capacity, you cannot be deemed as living there on a voluntary basis. The authority must consider the facts of your individual case and decide whether you have settled residence in its area.

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 powers to support people with **urgent needs** regardless of whether they are ordinarily resident (section 19 of the Act).

## Where local authorities disagree

If two or more local authorities cannot agree who is responsible, there is a legal procedure that must be followed and the Secretary of State for Health and Social Care makes the decision about responsibility.

The 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.

## Useful organisations

### Care Quality Commission

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

Telephone 03000 616 161

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 1983*.

### Carers UK

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

Telephone 0808 808 7777

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

### Citizens Advice

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

Telephone 0800 144 8848

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

### Equality Advisory Support Service

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

Telephone 0808 800 0082 Mon-Fri 9am-7pm, Sat 10am-2pm

Provides information and advice about the *Equality Act 2010* and human rights.

### Local Government and Social Care Ombudsman

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

Telephone 0300 061 0614

Final complaints stage for complaints about local authorities and care providers. It is a free service.

### Mind

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

Telephone 0300 123 3393

Provides information and advice for people with mental health problems.

### Relatives & Residents Association (The)

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

Telephone 020 7359 8136

Provides advice and support to older people in care homes, their relatives and friends.



## 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 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)

0300 303 4498

### 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

## Support our work

We rely on donations from our supporters to provide our guides and factsheets for free. If you would like to help us continue to provide vital services, support, information and advice, please make a donation today by visiting [www.ageuk.org.uk/donate](http://www.ageuk.org.uk/donate) or by calling 0800 169 87 87.

# Our publications are available in large print and audio formats

## Next update November 2022

The evidence sources used to create this factsheet are available on request. Contact [resources@ageuk.org.uk](mailto:resources@ageuk.org.uk)

This factsheet has been prepared by Age UK and contains general advice only, which we hope will be of use to you. Nothing in this factsheet should be construed as the giving of specific advice and it should not be relied on as a basis for any decision or action. Neither Age UK nor any of its subsidiary companies or charities accepts any liability arising from its use. We aim to ensure that the information is as up to date and accurate as possible, but please be warned that certain areas are subject to change from time to time. Please note that the inclusion of named agencies, websites, companies, products, services or publications in this factsheet does not constitute a recommendation or endorsement by Age UK or any of its subsidiary companies or charities.

Every effort has been made to ensure that the information contained in this factsheet is correct. However, things do change, so it is always a good idea to seek expert advice on your personal situation.

Age UK is a charitable company limited by guarantee and registered in England and Wales (registered charity number 1128267 and registered company number 6825798). The registered address is Tavis House, 1–6 Tavistock Square, London WC1H 9NA. Age UK and its subsidiary companies and charities form the Age UK Group, dedicated to improving later life.