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

Part 4 Code of Practice (Meeting Needs)



# Part 4

The Code of Practice on the exercise of social services functions in relation to part 4 (Meeting needs) of the Social Services and Well-being (Wales) Act 2014.

*Including eligibility, care and support planning and direct payments.*

*Issued under Section 145 of the Social Services and Well-being (Wales) Act 2014.*

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## Preamble

1. This code of practice is issued under section 145 of the Social Services and Well-being (Wales) Act 2014. Local authorities, when exercising their social services functions, **must** act in accordance with the **requirements** contained in this code. Section 147 (Departure from requirements in codes) does not apply to any **requirements** contained in this code. In addition, local authorities **must** have regard to any **guidelines** set out here.
2. In this code a **requirement** is expressed as “**must**” or “**must not**”. **Guidelines** are expressed as “**may**” or “**should/should not**”.
3. This code should be read in conjunction with Part 4 of the Act and Regulations made under section 32 (determination of eligibility), sections 54 and 55 (care and support plans and support plans), and sections 50, 51, 52 and 53 (direct payments) in Part 4 of the Act on Meeting Needs.
4. This code of practice on eligibility, care planning and direct payments is fundamentally linked to the code of practice on assessment and review under Part 3 of the Act, as both codes are critical to the design and delivery of the new system for accessing and delivering care services.

## Purpose

5. The Social Services and Well-being (Wales) Act 2014 (The Act) sets out the duties of a local authority in meeting needs for care and support, or support in the case of a carer, following an assessment. This code:
  - determines the point at which an individual will have an enforceable right to support from the local authority and the authority has a legal duty to provide or arrange care and support.
  - sets eligibility criteria that will apply to all people – children, adults and carers.
  - sets out the requirements of a care and support plan.
  - sets out the circumstances required by a local authority when making direct payments.
6. The local application of the determination of eligibility **must** support a move away from the deficit model of care (‘what is wrong?’) to an emphasis on strengths, capacity and capabilities (‘what can I do? /how can I get help?’). The approach to determining eligibility **must** be an outcome-based approach to eligibility that relates closely to the national outcomes framework. The starting point is the meaning of well-being as set out in Part 2 of the Act and the local authority **must** determine whether the provision of care and support, or support in the case of a carer, will assist the person to meet their personal outcomes within that framework of well-being. The local authority **must** be clear about what matters to the person, and what the person themselves can do to maximise their own well-being.

7. The application of national eligibility criteria for care and support has an important part to play in securing rights for people and ensuring local authorities meet their duties under the Act. The framework for eligibility presented in this code is a rights-based approach which enables a person to take a full part in decisions about their life. It requires a local authority to work in partnership with individuals and their families and carers to ensure that services meet the care and support needs identified. It also recognises the contribution people can make to their own well-being, and their responsibility to do so.
8. Local authorities **must** have due regard to the United Nations Conventions and Principles listed below when exercising functions in relation to an individual. Guidance on the requirements to have due regard are described in the code of practice in relation to Part 2 of the Act.
  - United Nations Principles for Older Persons
  - United Nations Convention on the Rights of the Child
  - United Nations Convention on the Rights of Disabled People
9. It is a principle of the Act that a local authority should respond in a person-centred, co-productive way to each individual's particular circumstances. Individuals and their families **must** be able to participate fully in the process of determining and meeting their identified care and support needs through a process that is accessible to them. This will include determinations of eligibility for care and support being undertaken through the person's language of need and preferred means of communication and in a style and manner appropriate to their age, disability and cultural needs.
10. An individual **must** feel that they are an equal partner in their relationship with professionals. It is open to any individual to invite someone of their choice to support them to participate fully and express their views, wishes and feelings. This support can be provided by someone's friends, family or wider support network.
11. The dedicated code of practice on advocacy under Part 10 of the Act sets out the functions when a local authority, in partnership with the individual, **must** reach a judgement on how advocacy could support the determination and delivery of an individual's personal outcomes; together with the circumstances when a local authority **must** arrange an independent professional advocate. Professionals and individuals **must** ensure that judgements about the needs for advocacy are integral to the relevant duties under this code.
12. The eligibility criteria sets out the duties of the local authority and the rights of the individual are upheld. These duties and rights are:
  - An enforceable right of the individual whereby the local authority **must** assess their need for care and support, determine whether any of the needs meet the eligibility criteria or **must** otherwise be met by the local authority and consider what could be done to meet those needs.
  - Eligibility criteria against which the needs of all individuals are to be assessed.

- An automatic right to eligibility for those adults at risk of abuse or neglect or in the case of a child, at risk of abuse, neglect or other harm.
- The presumption that a disabled child has needs for care and support in addition to, or instead of, the care and support provided by the child's family.
- An approach to determining eligibility for care and support that recognises the distinction between the local authority's general duties (as set out in Part 2 of the Act) and the establishment of an enforceable right for the individual to have their needs met by the local authority providing or arranging the provision of care and support (as required by parts 4 of the Act) if the needs meet the eligibility criteria.
- A requirement that an individual with needs for care and support has a right to the delivery of care and support provided or arranged by the local authority through a care and support plan where those needs cannot be met by themselves alone (or in the case of a child, together with parents or other persons caring for the child), or with the support of others, or with the assistance of services in the community.

## Context

13. Determining eligibility is not about giving a right to any one service, it is about guaranteeing access to care and support where without it the person is unlikely to achieve their personal outcomes.
14. Fundamental to this determination is an understanding of what actions the person can contribute to achieving their outcomes, with the support of their carers, family and community where this is available.
15. Where someone appears to have needs for care and support a local authority **must** carry out an assessment to consider the person's circumstances in the round. The complexity of the assessment process **must** be appropriate to the presenting need.
16. The eligibility status is conferred on the individual need not on the person – so where there are needs which can only be met through a care and support plan the person will have the right to have those needs met in this way. This means that some needs may be met through the delivery of a care and support plan even where that person is accessing community based services as part of the route to meeting their personal outcomes.
17. Eligibility is one element of the overall care and support system. The general duties on a local authority in relation to the provision of the information, advice and assistance service and preventative services as well as the promotion of social enterprises, co-operatives, user led services and the third sector are a core part of the overall system. The development of these duties will ensure that more people are enabled to access support easily in their communities.

18. The approach to assessment of need and determining eligibility **must** be one that focuses on people's strengths and capabilities, as well as on their needs and the barriers they face, to achieve their personal outcomes.
19. To promote the well-being of the child a local authority **must** take steps, which are reasonably practicable, to enable the child to live with his/her family or promote contact between the child and his/her family.
20. A person's changing circumstances can impact on eligibility at any time. A person's capacities and support mechanisms will vary over time and it is essential that this is recognised when determining the status of a need as an eligible need. A local authority's approach to meeting people's needs for care and support **must** be sufficiently responsive to ensure that an individual has access to the right support to attain their personal outcomes irrespective of their eligibility status.
21. As part of the determination of eligibility, the local authority **must** also consider the strengths and capabilities of the person themselves and whether the person would benefit from any preventative services; information, advice or assistance; or anything else that may be available in the community. This **must** be reflected in the assessment process.

## Process

22. The determination of eligibility will flow from, and is a product of, the assessment process as described in the code of practice on Part 3 of the Act. Assessment is the key process for the determination of eligibility and the two sets of Regulations and codes of practice need to be read together.
23. Following the assessment, a judgement **must** be made about whether the assessed need is eligible for care and support, based on the criteria in the Care and Support (Eligibility) (Wales) Regulations 2015. These Regulations set out separate but parallel descriptions of the needs which meet the eligibility criteria with respect to adults, children and carers.
24. The outcome of the assessment and eligibility decision **must** be recorded on the assessment and eligibility tool. The record **must** include all elements of the assessment and eligibility tool and the person should be provided with a copy. The tool provides a framework which includes the minimum requirements for undertaking an assessment and eligibility determination but the tool can be expanded and developed over time to include templates and further guidance. Further information about the assessment and eligibility tool is included in the code on Part 3 of the Act.
25. The determination of eligibility is distinct from any financial assessment that the local authority is required to make under Part 5 of the Act, where it is empowered to seek a contribution to the cost of care and support provided. However the financial assessment may inform the individual's decision on whether to accept the local authority care and support plan or take a different route to achieving their identified outcomes.

## 1. The National Eligibility Criteria

26. Determining eligibility through assessment ensures national eligibility criteria that will be consistently applied across Wales. Although the pattern of service delivery will vary from authority to authority, what remains constant is the right to care and support from a local authority where that care and support is not otherwise available to the individual with needs for care and support.
27. The eligibility Regulations set out the eligibility criteria for adults, children and carers. In each case, there are four separate conditions which **must** all be met:
  - i. The first condition relates to the person's circumstances and is met if the need arises from the kind of circumstances which are specified in the Regulations, for example physical or mental ill-health. The Regulations specify different kinds of circumstances for adults, children and carers.
  - ii. The second condition is met if the need relates to one or more of the outcomes specified in the Regulations, for example the ability to carry out self-care or domestic routines. The Regulations specify different outcomes for adults, children and carers.
  - iii. The third condition is met if the need is such that the person is not able to meet that need alone, with the care and support of others who are able or willing to provide that care and support ; or with the assistance of services in the community. This condition is modified in the case of a child such that it is met if the need is one that neither the child, the child's parents or other persons in a parental role are able to meet either alone or together.
  - iv. The fourth condition is met if the person is unlikely to achieve one or more of their personal outcomes unless the local authority provides or arranges care and support to meet the need in accordance with a care and support plan or it enables the need to be met by making direct payments.
28. The consideration of the first and second conditions for children, adults and carers set out in the Regulations will establish whether the nature of the person's needs and circumstances is such that a care and support intervention can address the needs identified in the assessment or enhance the resources that will enable the individual to achieve their personal outcomes.
29. If the provision of care and support cannot help the person achieve their outcomes the question of eligibility does not arise. It is not the purpose of the eligibility criteria to draw local authority care and support services into challenges they cannot address (such as provision of health care, employment, or education).

30. The consideration of the third and fourth conditions for children, adults and carers set out in the Regulations will establish whether the individual's needs are such that the needs cannot be met through:

- services available in the community which are accessible to them without the need for a care and support plan
- care and support co-ordinated by themselves, their family or carer, or others
- or by any other means

and whether the individual is unlikely to achieve their personal outcomes unless the local authority meets their needs for care and support **either** by providing support to the individual to enable them to co-ordinate the care and support that they need **or** by providing **or** arranging that care and support.

31. In determining eligibility, the local authority **must** ensure the individual is involved as a full partner in assessing to what extent they are able to meet their personal outcomes; or with the support of others who are willing to provide that support; or with the assistance of services in the community to which they have access.

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

33. It is the responsibility of the local authority to identify and record on the assessment and eligibility tool how the personal outcomes will be achieved. The record **must** include a statement of how the practitioner assesses the identified action will contribute to the achievement of the personal outcome or otherwise meet needs identified by the assessment. This applies to those needs which are to be met through the provision of care and support and those met through community based or preventative services, the provision of information, advice and assistance, or by any other means.

34. Even where a determination of eligibility is made there remains a general duty on the local authority to support people to access any appropriate community based services where these contribute to meeting the person's outcomes by providing information, advice or assistance under section 17 of the Act.

35. The reference in the eligibility criteria to the local authority preparing a care and support plan, and ensuring that it is delivered, includes a care and support plan which can be self-managed through the use of direct payments.

36. In making a determination of eligibility there should not be an over reliance on any voluntary caring arrangements. Local authorities **must** ensure that the ability of the carer to provide care is sustainable and that they comply with their general duty to promote the well-being of the carer and the person cared for.

37. Annex 1 contains some short case scenarios to illustrate this approach to eligibility of needs.

## Automatic Requirements to Meet Needs

38. Where the local authority determines it is necessary to meet the needs of the individual to protect the person from abuse or neglect or the risk of abuse or neglect (and in the case of a child: harm or the risk of harm) there is no need to consider or apply the determination of eligibility and the local authority **must** not apply that determination where to do so may prevent or delay the local authority from making a response designed to protect and safeguard the person concerned.

## Adults

39. A local authority **must** meet those needs which the local authority considers it is necessary to meet in order to protect an adult from abuse or neglect, or risk of abuse or neglect. This is an overriding duty on a local authority irrespective of any application of, or outcome from, the determination of eligibility.

## Children (including young carers)

40. As is the case with adults, a local authority **must** meet the needs of children which the local authority considers it is necessary to meet in order to protect the child from abuse or neglect or a risk of abuse or neglect or in order to protect the child from other harm or risk of such harm. This is an overriding duty on a local authority irrespective of any application of, or outcome from, the determination of eligibility. A local authority's duties in respect of looked after children are contained within Part 6 of the Act.
41. Local authorities **must** determine whether the needs of the individual call for the exercise of any function they have under Part 4 (Care and Supervision) or Part 5 (Protection of Children) of the Children Act 1989.

## Discretionary Powers to meet needs

42. Discretionary powers are also provided in the Act to enable a local authority to meet the care and support needs of an individual irrespective of the eligibility determination. These powers also enable a local authority to respond to urgent need, or to act to protect a person without the need for first completing an assessment or determining eligibility. These powers can also be exercised in relation to any person who is within the local authority's area, even if they are not ordinarily resident in the area.
43. Where a local authority (A) meets the urgent needs of person who is ordinarily resident in the area of another local authority in Wales (B) and the other local authority has consented to this, then authority A can recover the costs from authority B. This is a requirement under Section 193, Part 11 of the Act.

## Carers and care and support provided by a child's family

44. The duty on a local authority to meet an adult's needs for care and support does not apply to the extent that the local authority is satisfied that those needs are being met by a carer. The local authority **must** also satisfy itself that the carer is willing and able to do so. Where a carer is not currently meeting the adult's needs but is expected to do so (for example on the discharge of the cared for person from hospital) then there is no duty on the local authority to meet those needs.
45. Similarly, the duty to meet a child's needs for care and support does not apply to the extent that the local authority is satisfied that those needs are being (or will be) met by the child's family or by a carer. The local authority **must** also satisfy itself that the carer is willing and able to do so. Where a carer is not currently meeting the child's needs but is expected to do so (for example on the discharge of the cared for person from respite or hospital care) then there is no duty on the local authority to meet those needs.
46. The local authority **must** identify all presenting needs in the assessment, including those needs which would be deemed as eligible if the carer or the child's family was not meeting needs. This is so that the local authority is able to respond appropriately and quickly where the carer or the child's family becomes unable or unwilling to meet some or all of the identified care and support needs.
47. The point at which a carer is unable or unwilling to carry on meeting a care need, or informs the local authority that this is about to happen, will constitute a significant change in circumstances for the cared for person. As a result the local authority **must** undertake a re-assessment of the person's needs for care and support.
48. Where a carer is suddenly unable to meet a care and support need the requirement for a re-assessment **must** not prevent or delay the local authority taking urgent and immediate action to meet the care and support needs of the adult or child. Such action should be informed by the most recent assessment undertaken.
49. The Act entitles anyone to have an assessment where there appears to be a need for care and support – even if that care and support is being met by a carer.
50. Where the carer is a child the local authority **must** have regard to his or her developmental needs and the extent to which it is appropriate for the child to provide the care. This should lead to consideration by the local authority of whether a child carer is actually a child with care and support needs in his or her own right and who therefore should be assessed under section 21 of the Act. For guidance on assessing the needs of children who are carers please refer to the code of practice in relation to Assessment and Review under Part 3 of the Act

## Disagreement about the determination of eligibility

51. Where the local authority determination is that the person's needs do not meet the eligibility criteria and the individual disagrees with that determination then the individual will be informed of their right to access the complaints process and supported through that process. This should not lead to undue delay.
52. Where needs and circumstances change the individual has the right to request a re-assessment of their needs for care and support. Further detail about re-assessment is included in the code of practice under Part 3 of the Act.

## Refusal of a Care and Support Plan

53. Following the determination of eligibility it is strongly advised, but not required, that the individual and the local authority agree the care and support plan. The local authority may also determine that someone has a right to care and support even though that person may refuse to accept it. In these instances the local authority **must** record why a care and support plan was refused. The eligibility status **must** be preserved and the local authority **must** re-frame their support so as to maintain their awareness of the person's needs and enable an appropriate and timely response should the person re-consider their refusal of care and support.
54. Should a person lack capacity to make the decision to refuse a care and support plan the local authority **must** meet its duties under the Mental Capacity Act 2005 and associated code of practice<sup>1</sup>.
55. All reasonable steps should be taken to maximise a person's ability to communicate their wishes so as to ensure that the care and support plan is in the person's best interests and is appropriate to their identified needs.

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<sup>1</sup> Link to the codes of practice for the Mental Capacity Act 2005 [http://www.legislation.gov.uk/ukpga/2005/9/pdfs/ukpgacop\\_20050009\\_en.pdf](http://www.legislation.gov.uk/ukpga/2005/9/pdfs/ukpgacop_20050009_en.pdf)

## 2. Care and Support Planning (including Direct Payments)

56. In this code of practice, except where otherwise indicated, any reference to duties or powers in relation to care and support plans should be read as applying equally to support plans for carers. Similarly any reference to 'care and support' should be read as referring to 'support' where this applies to carers.
57. Where an individual uses direct payments to manage their own care (either directly or through another) those direct payments will form part or all of a care and support plan. The Act refers to identifying outcomes for individuals and the delivery of care and support to meet the needs of individuals. This code of practice does not preclude a care and support plan meeting the needs of the individual by the delivery of care and support to members of the individual's family where that is the most appropriate way to meet the needs of individuals within that family and to support those individuals to achieve their personal outcomes.

### Purpose

58. Section 54 of the Act provides that a local authority **must** prepare and maintain a care and support plan or a support plan for a person whose needs it is required to meet. The plans **must** be kept under review. If the local authority believes that a person's circumstances have changed in a way that affects the plan, it **must** conduct such assessments and revise the plan in the light of those assessments. A plan **must** not be closed without a review.
59. This code of practice covers the duties and functions on local authorities with respect to care and support planning and review arrangements for individuals and families.

### The Care Planning Process

#### Right to a care and support plan and review of plans

60. A local authority **must** provide and keep under review care and support plans for people who have needs which meet the eligibility criteria and for people where it appears to the local authority that it is necessary to meet the person's needs in order to protect the person from abuse or neglect or the risk of abuse or neglect (and additionally in the case of a child: harm or the risk of harm).
61. Where the duties to a child fall under Part 6 of the Act (Looked After and Accommodated Children) the local authority **must** review the care and support plan in line with the requirements of the Regulations made under that part of the Act.

62. A local authority **must** provide and keep under review support plans for carers whose needs meet the eligibility criteria. This is in order to promote consistency between plans for carers and to treat carers in the same way as people with needs for care and support. In some instances an assessment may identify that where the person is a carer with support needs the local authority can meet those needs by providing care and support to the person cared for. This may be the case even when there is no duty to meet the needs of the person cared for and there is no separate care and support plan for that person.
63. A local authority is required to prepare a care and support plan for people whose needs meet the eligibility criteria, or their needs **must** be met for another reason (such as protection from abuse), where that person is unlikely to achieve their personal outcomes unless the local authority provides or arranges care and support to meet an identified need.
64. Many individuals' and families' needs can be met without a formal care and support plan. In such instances the information, advice and assistance service or other preventative and community based services such as those from social enterprises, co-operatives, third sector, and user-led services **must** be clearly signposted. A record of how these needs will be met without a formal care and support plan **must** be made on the assessment and eligibility tool referred to in the code of practice in relation to Part 3 of the Act.

### Preparing and Delivering Care and Support Plans

65. Local authorities should work with their Local Health Board and NHS Trusts to agree arrangements across the Local Health Board footprint area for delegating practitioners to work with those whose needs require a care and support plan.
66. The Care and Support Plan **must** be developed in partnership with the individual to ensure there is an agreed understanding of how the needs will be met and personal outcomes achieved.

### Care and Support Plan Co-ordinator

67. Where a local authority is required to prepare and maintain a care and support plan or a support plan, it **must** ensure that there is a named individual to co-ordinate the preparation, completion, review, delivery and revision of the plan.
68. The name of the care and support plan co-ordinator **must** be recorded on the core data set under part 3 of the Act. In many cases the care and support plan co-ordinator will be the same practitioner as the assessment co-ordinator.
69. The role of the co-ordinator will include monitoring the delivery of the services and support delivered through the plan where it is agreed that this is required. The responsibilities of this role will include:

- to draw in additional specialists as required
- to act as a focus for communication for different practitioners and the individual
- to make sure that information is recorded correctly and that the care and support plan is made available to the individual; and
- to ensure that any problems or difficulties in the co-ordination or completion of a review are resolved.

70. A local authority **must** ensure that the care and support plan co-ordinator who is responsible for preparing, reviewing or revising a care and support plan or support plan:

- has the skills, knowledge and competence to do so
- has received appropriate training; and
- is aware of other plans in place for the individual to avoid duplication, omissions or confusion.

It is advised that the appropriate levels of qualification for undertaking these activities include:

- **either** a registered social work / social care professional holding a professional qualification at level 5 or above
- **or** a person holding a social care qualification at level 4 or above, which includes knowledge and skills undertaking person centred assessment, under the supervision of a registered social work / social care professional.

A local authority will also need to be satisfied that all staff undertaking these activities have the skills, knowledge, and competence to work with children and young people, adults and carers, as appropriate.

### Services to people who are deafblind

71. A local authority **must** ensure that services provided to deafblind people are appropriate, recognising that they may not necessarily be able to benefit from mainstream services or those services aimed primarily at blind people or deaf people who are able to rely on their other senses. Local authorities **must** ensure that deafblind people are able to access specifically trained one-to-one support workers for those people they assess as requiring one. This is illustrated in case scenario 'Dual sensory impairment' in Annex 2. The Director of Social Services **must** have overall responsibility for deafblind services within his/her responsibilities.

### Adoption Services

72. Local authorities **must** ensure that practitioners preparing, maintaining and reviewing care and support plans for the purposes of adoption fulfil the requirements of the 'Restriction on the Preparation of Adoption Reports Regulations 2005'. Staff undertaking linked duties not covered by these Regulations should have the relevant knowledge and understanding of the lifelong implications of adoption.

## Financial

73. In cases where the care and support plan identifies care and support which may require a financial contribution from the individual, arrangements **must** be made to ensure the individual is clear about this, and that a financial assessment is undertaken where this is required under Part 5 of the Act.
74. If an individual has financial means above the financial limit (as set out in Regulations made under section 69 of the Act) the local authority should ensure they continue to have access to good quality information, advice and assistance that enables them to make informed decisions about their care and support needs. This is particularly true for people making critical decisions about their ability to live independently.
75. In some circumstances an individual with means above the financial limit may need support from the local authority to make arrangements for their care and support. The local authority will need to undertake an assessment with the individual and make an eligibility determination. If the needs meet the eligibility criteria and the individual asks the authority to meet those needs, the local authority will be under a duty to make arrangements with the placement provider. In such cases the local authority will be the contract holder with the provider and the individual will be deemed to be ordinarily resident in the area of the local authority in which they were ordinarily resident immediately before the placement, such that the local authority which made the placement would continue to be responsible. The rate at which the local authority commissions the placement is a matter for local authority determination.

## Format of Care and Support Plans

76. The format of the care and support plan **must** be agreed by the local authorities and Local Health Board and NHS Trusts and, as a minimum, **must** be consistent across the regional footprint of the Local Health Board. This requirement does not prevent local authorities and Local Health Boards and NHS Trusts working together on a wider, or national basis, to develop a consistent format for care and support plans.
77. Local authorities **must** work together with Local Health Boards and NHS Trusts to ensure that local and specialist templates for care and support plans meet the national minimum core data set and content required in the following sections. The core data set should enable practitioners to quickly identify and reference other health, care and support, and well-being assessments and care plans that have been provided to the individual and/or family.
78. To promote consistent practice across Wales the national minimum core data set ensures that individuals can rely on their local agencies to have a common baseline of information in all care and support plans across the country. This will mean that practitioners will share a common data set as the basis for well coordinated services and prevents an individual being asked for the same information more than once. For further guidance on the core data set please refer to the code of practice on Part 3: Assessment and Review.

79. The core data will have been collected during the assessment and should not need to be collected again, although it may need to be checked for accuracy and updated. The named lead practitioner responsible for the co-ordination of the care and support planning and review process should source this information from the record of the assessment and transfer it to the care and support plan.
80. For many people being able to use the Welsh language enables them to communicate and participate in their care as equal partners. Local authorities should make sure Welsh language services are built into the process of care and support planning and ensure that individuals and their families can fully participate in the process of care and support planning by making all relevant information available in a format that is accessible to them through their preferred means of communication.

### Content of Care and Support Plans

81. A care and support plan could relate to a single service meeting one or more care and support needs or be more complex and involve mapping out several different services meeting one or more needs. A care and support plan could include actions which are self-managed alongside those which are managed by the local authority.
82. Local authorities **must** ensure that they have information technology systems to support the care planning process to ensure that the care plan is recorded electronically. This does not preclude local authorities providing copies to individuals in their preferred and most accessible format.
83. It is the responsibility of the practitioner who has developed the plan with the individual (including any formal or informal advocacy support) to ensure there is a clear and concise confirmation of the agreed actions, and who will undertake them within the plan.
84. Care and Support Plans **must** cover the following:
  - the outcomes which have been identified in relation to the person to whom the plan relates
  - the actions to be taken by the local authority and other persons to help the person achieve those outcomes
  - the needs that will be met through the delivery of care and support
  - how progress towards achieving those outcomes will be monitored and measured
  - the date of the next review of the care plan.
85. Where appropriate Care and Support plans should also set out:
  - the roles and responsibilities of the individual, carers and family members, and practitioners
  - the resources (including financial resources) required from each party.

86. Where some or all of the person's needs are to be met by making direct payments, a care and support plan and a support plan **must** also contain a description of:
- the needs which are to be met by direct payments; and
  - the amount and frequency of the direct payments.
87. Where enquiries have been made by the local authority in accordance with its duty under section 126 (2) of the Act (adults at risk), or section 47 of the Children Act 1989, the care and support plan for the individual who is the subject of those enquiries **must** contain a record of the conclusion of the enquiries. The conclusion should include whether the person is or is not at risk and what action should be taken and by whom. Should a care and support plan be refused, or not required if the assessment concludes that needs can be met through other means, the findings of enquiries should be recorded in the individual case record as referenced in the Statutory Guidance relating to Part 7 of the Act. The Care Plan may also incorporate any protection plan that is in place.
88. Care and Support Plans **must** contain a clear date, which should be agreed with the individual and/or family, by which the plan will be reviewed however:
- in the case of a child the date of review **must** not exceed 6 months
  - in the case of an adult the date of review **must** not exceed 12 months.
89. Local authorities, with their partners, **must** have in place arrangements to review or re-assess more promptly whenever it may appear that the current plan is not meeting the individual or family's needs.

### Common Considerations for Care and Support Planning

90. The following principles should underpin the process of preparing care and support plans and should be used as the basis for testing the fitness of any local or specialist arrangements:
- **People centred:** Individual and family views and wishes will shape the form of engagement with services where this is appropriate. This will include the option of individuals receiving direct payments to meet their care and support needs, or in the case of carers, their support needs.
  - **Promote Well-being:** Services will build on people's and families' strengths and abilities and enable them to maintain an appropriate level of autonomy with the appropriate level of care and support provided this is consistent with their well-being.
  - **Outcome Based:** work with people and families will be based on a comprehensive analysis of needs, personal outcomes, risks, and the strengths and capabilities people and families have available to them.
  - **Involving wider family, community and carers:** recognise the contribution of the wider community, family and carers and seek to provide support to them whenever appropriate.

- **Proportionate:** the provision of care and support will be appropriate to the person's or family's needs. All practitioners will play a pro-active role in helping people and their families to get appropriate early help and support.
- **Use appropriate language and communication methods:** Individuals and their families will be able to fully participate in their care and support planning process by having all relevant information available in a format that is accessible to them including through their language of need and preferred means of communication.
  - Local authorities **must** provide information in formats and methods that are accessible to deafblind people where it is necessary to do so to meet this principle.
  - Information should be accessible through the medium of Welsh and English reflecting the Welsh Government Strategy 'More than Just Words'. In particular, the Active Offer principle **must** be embedded to ensure individuals do not have to ask for their language of choice. This means that the local authority should be proactive in its approach and the individual should be asked which language they would prefer at the beginning of the process. This will ensure that they are able to receive services in their own language throughout the process of identifying and meeting care and support needs.
- **Clear:** work with individuals and families will be straightforward and understandable for them. People will be informed of the process and their rights. Support will be based on evidence and research about what works. This should not exclude innovative practice.
- **Safeguarding and Protecting:** all practitioners will be alert to any risk or harm to the individual or to others – including others in their care. Assessment and care and support planning will explore the possible responses to those risks and agree approaches to risk management and/or mitigation.
- **Integrated:** support for people and families will be based on a consistent and common framework across services, and jointly owned and operated by practitioners, in order to ensure that people receive timely and effective access to safe care and support.
- **Multi-agency:** ensure that all of the roles and responsibilities of different agencies contributing to an individual's well-being are included to promote joint working and an integrated approach to care and support planning and delivery.
- **Sustainable:** Services will be based on proven methods, be cost effective and keep families together where it is safe and appropriate to do so. This will include supporting people at home and minimising the potential for the breakdown of support. This should not exclude innovative practice.
- **Informed:** information and specialist assessments about a person, family or carer will be shared between relevant agencies wherever agreed by the individual, and be of a depth and detail appropriate to the person's needs.
- **Equitable:** services and systems will provide equity of opportunity and will respect diversity of needs.
- **Delivered by the right people:** care and support will be delivered through an appropriate mix of suitably experienced and qualified staff.

- **Performance Measured:** the effectiveness of care and support services will be judged on a combination of individual service user, family and colleague feedback, regular local evaluation with service users and other stakeholders, and national performance measures that relate to the national outcomes framework.
91. The depth and detail of the care and support planning process **must** be appropriate to the individual's needs. The complexity or severity of the person's, or family's, need will determine the scope and detail of the care and support plan and the range of interventions, including the type of support, and the frequency of reviews.
  92. The process of identifying care and support needs and preparing a care and support plan **must** ensure that people are empowered to express their needs and are able to fully participate as equal partners.
  93. An individual **must** feel that they are an equal partner in their relationship with professionals. It is open to any individual to invite someone of their choice to support them to participate fully and express their views, wishes and feelings. This support can be provided by someone's friends, family or wider support network.
  94. The dedicated code of practice on advocacy under part 10 of the Act sets out the functions when a local authority, in partnership with the individual, **must** reach a judgement on how advocacy could support the determination and delivery of an individual's personal outcomes; together with the circumstances when a local authority **must** arrange an independent professional advocate. Professionals and individuals **must** ensure that judgements about the needs for advocacy are integral to the relevant duties under this code.
  95. The local authority should provide a copy of the care and support plan, support plan or closure statement (as the case may be) to the person to whom the plan or closure statement relates and to any person authorised to act on behalf of that person. These plans **must** be made available in the person's language of need and in a format that is accessible to them through their preferred means of communication.

### Length of Visits

96. Where the care and support plan involves visits to the person's home for the purpose of providing care and support, those visits **must** be of sufficient length to ensure the appropriate delivery of the care and support identified to meet the assessed needs and contribute to enabling the person to meet their personal outcomes. The length of these visits **must** be identified in the care and support plan.

### Overlapping Duties to Prepare Care and Support Plans

97. The process of preparing, reviewing or revising a care and support plan may link in with the preparation, review or revision of plans by other bodies for the person in question. Local authorities may co-ordinate the preparation and review of plans where another body is preparing a relevant plan at the same time.

98. Where there are overlapping duties to prepare plans that are nationally or legally prescribed (for example a Care and Treatment Plan prescribed under the Mental Health (Wales) Measure 2010 or a 'section 31A plan' prepared for the purposes of Part 4 of the Children Act 1989), and there is a plan that meets the requirements of a care and support plan; the preparation, delivery and review of that plan can be regarded as the way for the local authority to meet its duties to prepare, deliver and review a care and support plan.
99. There is also an overlapping duty in respect of assessments for adoption support services under the Adoption and Children Act 2002 and the associated Regulations and Guidance. The duty to prepare an adoption support plan is enhanced by the provisions of this Act. Where, following the assessment, the local authority is satisfied that the conditions and eligibility for a care and support plan are met it **must** prepare a care and support plan in line with these Regulations and code of practice. Eligibility and entitlement to adoption support services remains as outlined in the Adoption and Children Act 2002, the associated Regulations and Guidance.
100. Where there are well-being or specialist plans which do not meet the requirements of a care and support plan the local authority **must** ensure that practitioners have regard to the requirement of the Regulations on care planning and this code of practice but **must** combine the care arrangements into a single integrated care and support plan. This will include plans relating to the safeguarding of the individual.
101. The section on information sharing (below) sets out the responsibilities on agencies to share appropriate and relevant information between practitioners and service providers to support the preparation, delivery, and review of a single integrated care and support plan that meets the assessed needs of the individual or family.

### Information Sharing

102. The willingness and ability to share appropriate and relevant information between practitioners and service providers is inherent to the delivery of effective care and support services.
103. The process of care and support planning set out in this code is based upon the principle of working with people as full partners in identifying and meeting their care and support needs. The information in the care and support plan is owned by the person whose needs are being met through that plan and practitioners undertaking care and support planning **must** ensure that the person giving the consent to share information fully understands what they are consenting to and the implications of giving or not giving this consent.

104. Working with individuals and families within a professional relationship built on trust, respect and confidence should help to ensure that this conversation is not a difficult one. Being open and honest, including being clear about information sharing and respecting people's wishes wherever possible, will help to maintain this trust and confidence. This conversation is an integral part of making sure that the practitioner fully understands the person's needs and how best to meet those needs, including which other practitioners may be able to support them.
105. This code endorses the Caldicott 2<sup>2</sup> recommendations that '*... there should be a presumption in favour of sharing for an individual's direct care and that the exceptions should be thoroughly explained, not vice versa. The motto for better care services should be: "To care appropriately, you must share appropriately".*' Therefore the presumption should be that all information is shared.
106. Local authorities **must** work with their partners to have systems in place to ensure that, as a minimum, information in the national core data set for any individual or family is shared safely and appropriately between partners. This will include using the Wales Accord on the Sharing of Personal Information<sup>3</sup> (WASPI) information sharing framework and developing WASPI - compliant information sharing agreements which should ensure to a great extent that the arrangements put in place will be compliant with the Data Protection Act 1998 (DPA).
107. A local authority **must** also ensure that staff are supported and trained appropriately in both information sharing and compliance with the DPA. Staff accessing or using the data **must** be trained in good data handling and be aware of security issues. Individuals and families **must** be informed of this sharing at the start of the assessment and care and support planning process.
108. When a child or adult is identified as being at risk of abuse or neglect the presumption should be that all information is shared among relevant partners at an early stage provided it is lawful to do so and in keeping with the Data Protection Act 1998 and associated guidance.

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<sup>2</sup> Caldicott 2 - <http://www.wales.nhs.uk/sites3/page.cfm?orgid=950&pid=68298>

<sup>3</sup> Wales Accord on the Sharing of Personal Information <http://www.waspi.org/>

## Portability of Care and Support Plans

109. When an individual who is in receipt of services or support through a care and support plan has informed the authority from which they intend to move that they will be moving to another area in Wales and the authority is satisfied that the move is likely to happen, that authority ('the sending authority') **must** notify the authority to which the person intends to move ('the receiving authority') of this information and **must** ensure that the information contained within the assessment and the care and support plan is made immediately available to the new authority. At this point, the receiving authority **must**, if it is satisfied the move is likely to happen, carry out a new assessment of the person's needs, having regard in particular to any change in the person's needs for care and support arising from the move. If, on the day the person moves, such an assessment has not yet been carried out, the receiving authority **must**, in so far as reasonably practicable, meet the person's needs for care and support in accordance with the care and support plan prepared by the sending authority until a new assessment is undertaken.
110. These portability arrangements do not apply where the sending authority is meeting a person's needs in accordance with its discretionary power. In such cases there will still be a duty on the receiving authority to carry out a new assessment (in accordance with its responsibilities under section 19 or section 21<sup>4</sup> of the Act).
111. In cases where a carer moves to the area of another local authority but there is no change in the residence of the person cared for, the portability arrangements do not apply as there is no change to the identity of the local authority which is responsible for the preparation and maintenance of the support plan for the carer.
112. There is an expectation that good practice will apply when a person moves across national boundaries to minimise disruption of the care and support provided to that person. UK cross border principles on the continuity of care have been developed and are included in Annex 2. Local authorities should follow these good practice principles when a person moves across national boundaries.

## Review of Care and Support Plans

113. A local authority **must** keep care and support plans under review to understand whether the provision of that care and support is meeting the identified needs of the individual, and to consider if their needs have changed and if a re-assessment is required. The agreed date for the review of the plan **must** be set out in the plan.
114. The purpose of a review is to systematically revisit the care and support plan to:
- monitor progress and changes
  - consider the extent to which the delivery of the plan is meeting assessed needs and how it has helped the individual or family to achieve their outcomes
  - determine what support is needed in future, and confirm, amend or end the services involved.

This **must** be reflected in the recording of the review.

115. A review is a key part of effective care and support and good arrangements can ensure that services remain appropriate, well targeted and relevant to the individual, and encourage the individual to continue to maintain control over their support.
116. The review arrangements **must** ensure that the individual and/or their carer, family members or advocate is an active participant in the review.
117. When carrying out a review the local authority **must** involve the person who is the subject of the plan and, in the case of a care and support plan relating to a child, any person with parental responsibility for the child. In the case of a care and support plan relating to an adult, the authority **must**, where feasible, also involve any carer of the person. In the case of a support plan relating to a carer, the authority **must**, where feasible, also involve the person for whom the carer provides or intends to provide care.
118. In all cases, where appropriate and with the agreement of the person concerned<sup>5</sup>, the local authority should also involve:
- any person whom the person (or parent in the case of a child) asks the local authority to involve
  - other practitioners/ professionals who have undertaken or will need to undertake a related assessment
  - other practitioners/ professionals with expertise in the circumstances or needs of the person concerned
  - any other person, including carers, whom the local authority considers to have sufficient involvement in the care or support arrangements for the person; or
  - an advocate
119. In the case of a person who lacks the capacity to be involved, the authority should involve any person authorised to make decisions about the individual under the Mental Capacity Act 2005
120. Local authorities **must** carry out further assessments and revise the care and support plan if there has been a change in the person's circumstances. Where a specialist has been involved in the person's initial assessment, the local authority should consider whether the specialist should be involved in the review. Local authority responsibilities relating to this requirement are set out in more detail in the code of practice in relation to assessments and review under part 3 of the Act. Such assessments may be carried out at the same times the local authority carries out an assessment under other legislation or at the same time as another body carries out an assessment under other legislation. In such cases, the local authority may carry out the assessment on behalf of or jointly with the other body or jointly with another person who is carrying out the other assessment.

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<sup>5</sup> or the parent in the case of a child, or any person duly authorised to make decisions on behalf of a person who lacks capacity to agree

121. All care and support plans **must** have a review date. This date **must** be agreed or set at the inception of the care and support plan and each subsequent review. A care and support plan and a support plan **must** be reviewed within such period as is agreed between the local authority and the person to whom the plan relates and any person who the local authority is required to involve in the preparation and review of the care and support plan. This will include an advocate where required to enable the person to engage and participate fully in the care and support planning process. In the case of a child the date of review **must** not exceed 6 months and in the case of an adult the date of review **must** not exceed 12 months.
122. If it appears to the local authority that the care and support plan is not meeting the assessed needs the local authority **must** undertake a review irrespective of the agreed review date. This may be at the request of the individual, persons with parental responsibility, or any person authorised to act on their behalf.
123. Where the plan contains details of direct payments, any review of the direct payments **must** involve a review of the care and support plan. Where someone is in receipt of direct payments and the review of the care and support plan results in a change to the care and support plan there **must** be a review of the direct payments.

## Closure

124. A review **must** be undertaken before a care plan is closed.
125. Following the review, the local authority **must** consider whether to confirm, revise or close the plan. If it is decided to confirm the plan, the decision and the reasons for the decision **must** be recorded. If it is decided to close the plan, the local authority **must** prepare a closure statement.
126. A care plan **must** not be closed while a young person is known to the Youth Offending Team.
127. Where it is planned that services will no longer be provided the review **must** include a closure statement covering reasons for closure; an evaluation of the extent to which the outcomes were achieved; and confirmation that the individual or family has appropriate information, advice or assistance and / or access to community based preventative services to meet their needs. The closure statement **must** be recorded.

## Direct Payments

128. Direct payments are monetary amounts made available by local authorities to individuals, or their representative, to enable them to meet their care and support needs; or in the case of a carer, their support needs. Direct payments are an important mechanism by which people can exercise choice, voice and control to decide how to meet their needs for care and support and achieve their personal outcomes. As such direct payments are an integral part of meeting people's needs

through care and support planning, and **must** not be seen as a separate, secondary, consideration.

129. Direct payments replace care and support provided directly, or commissioned by, a local authority. They can be for all, or part, of a person's care and support needs, in the latter case the remainder of their care and support needs being met in an alternative manner.

130. Under the Act local authorities have powers to provide direct payments under:

- section 50 – to meet the care and support needs of an adult
- section 51 – to meet the care and support needs of a child
- section 52 – to meet the support needs of a carer.

In the provision of, and operation of direct payments, authorities **must** follow the provisions of the relevant section of the Act. They **must** also follow the relevant section(s) of the Regulations on direct payments, 'The Care and Support (Direct Payments) (Wales) Regulations 2015' made under sections 50, 51, 52 and 54 of the Act. In cases where the care and support plan identifies care and support which may require a financial contribution from the individual, arrangements **must** be made to ensure the individual is clear about this, and that a financial assessment is undertaken where this is required under Part 5 of the Act.

## Offer and Scope of Direct Payments

131. Where eligible care and support needs, or support needs in the case of a carer, have been identified and that individual, or their representative, expresses a wish to receive one, direct payments **must** be made available in all cases where they enable personal outcomes to be achieved. A local authority **must** be innovative and creative when working in partnership with recipients or their representatives to explore ways a direct payment can be used to secure the personal outcomes. Direct payments **must** only be refused where it is clear after extensive exploration that a direct payment would not secure the outcomes required.

132. Individuals **must** not be refused a direct payment purely because they are unable to manage the payment, or apprehensive about managing one. A local authority, in partnership with the person, **must** explore all options for supporting the individual to manage a direct payment. Where areas of difficulty are identified, local authorities **must** ensure the correct level of support to overcome such barriers is available.

133. Direct payments can be provided for any identified need for care and support a local authority is to meet. This includes community care and support and short and long term residential care and support. However, section 47 of the Act prevents local authorities from meeting needs through the provision of healthcare, unless doing so would be incidental or ancillary to doing something else to meet a citizen's needs. Consequently, such a restriction applies to the provision of a direct payment.

134. In developing care and support plans which are delivered via a direct payment, a local authority **must** be satisfied that the person's requirements and their personal outcomes can and will be met through this provision. Where a person's needs fluctuate over time, a local authority **must** work in partnership with the individual, or their representative, to agree how the direct payment will be used to secure care and support that varies according to requirement.
135. Where barriers to achieving personal outcomes exist, a local authority **must** work in partnership with the individual, or their representative, to explore alternative ways to overcome them.
136. Local authorities **must** promote self-management and aim to increase independence by enabling people to become actively involved in shaping their care and support. In the development of, and provision of a direct payment, a local authority **must** encourage and support people to determine their own personal outcomes and the care and support they require to achieve these taking into account their existing support networks. People **must** be encouraged to find creative, flexible and innovative ways to maximise their personal outcomes.

### Capacity to Consent - Appointing a Suitable Person

137. If an adult lacks capacity to manage a direct payment or chooses not to manage the payment themselves, the direct payment can be paid to, and managed by, someone acting on their behalf - a 'suitable person'. A suitable person may be appointed by a court to act on an individual's behalf, appointed by a local authority, or be someone the individual chooses to act on their behalf (see Capacity to Consent paras 142-145). A suitable person can themselves have support to manage a direct payment if required.

### Direct Payment Recipients as Employers

138. Where a direct payment is used to employ someone, local authorities **must** ensure recipients, or their representatives, are fully aware of their legal responsibilities as an employer and that they receive the necessary support and resources to manage their employment responsibilities. This includes supporting recipients to ensure employees are legally entitled to work in the UK.

## Calculating the Amount of Direct Payments

139. A local authority **must** ensure the value of a direct payment made is equivalent to its estimate of the reasonable cost of securing the care and support required, subject to any contribution or reimbursement the recipient is required to make. The value **must** be sufficient to enable the recipient, or their representative, to secure the care and support required to a standard the local authority considers reasonable. While there is no limit on the maximum or minimum amount of a direct payment, it **must** be sufficient to enable the outcomes to be met.
140. In calculating the value of a direct payment a local authority **must** include inherent costs associated with being a legal employer or by providing sufficient financial support to purchase an adequate legal service to ensure the recipient complies with the legalities of being an employer. A local authority **must** also consider including, on a case by case basis, discretionary costs associated with the requirements for achieving the recipient's personal outcomes. For example, non statutory liabilities such as an ex gratia bonus payment.
141. A local authority **must** keep abreast of any external factors such as regulatory changes imposed by central government which could determine the value of a payment. Adjustments to incorporate any changes **must** be made in a timely manner.

## Review of Direct Payments

142. A local authority **must** review the arrangements for the making of direct payments and how they are being used at intervals determined by the local authority in line with the requirements in this code for reviewing care and support plans, but in any event at intervals no greater than 6 months after the first payment is made and 12 months following the first review.

### 3. The Operation of Direct Payments

#### Developing Direct Payments

143. In addition to working with individuals to develop ways in which they can meet their requirements, a local authority **must** develop its direct payment scheme to be responsive to solutions and outcomes, and more relevant to the communities they serve. A local authority **must** work in partnership with local care and support providers to support initiatives which will meet well-being outcomes not only in the traditional way but through the development of citizen led direct payment co-operatives and social enterprises.

#### Information and Support

144. A local authority **must** provide appropriate, accessible information and support to enable people, or their representatives, to decide whether they wish to receive direct payments. The information and support provided **must** be suitable to meet their communication needs and **must** be sufficient for the person, or their representative, to be able to make an informed decision.

145. A local authority **must** develop local support services for direct payment recipients which are able to provide the help and assistance a recipient, or their representative, requires to receive and manage a direct payment. Support services **must** be able to meet the support requirements of a recipient to enable them to achieve their personal outcomes. Local authorities **must** explore, in partnership with recipients, the different models and ways support can be provided to ensure the arrangements they have in place are effective, responsive to recipients' requirements and are person centred.

146. In order to make an informed decision on whether to receive a direct payment, individuals need to understand what is involved in managing a direct payment. A local authority **must** provide, or arrange the provision of as early in the process as possible, information and support on what receiving direct payments will involve and ensure the person fully appreciate what this entails.

147. Managing direct payments is not simply about handling money. A local authority **must** ensure those requesting a direct payment fully understand this and that it involves them making their own arrangements to secure their care and support, with assistance if necessary. Where appropriate, individuals **must** be advised that they are able to receive direct payments even if they manage part or none of it and their representative manages the remainder or all of the direct payments on their behalf.

148. When discussing how needs might be met via direct payments, a local authority **must** be prepared to be open to new ideas and be as flexible as possible. People **must** be encouraged to explore innovative and creative ways to identify how they might most effectively achieve outcomes in a way that aligns with their personal preferences.

## Ability to Manage

149. A local authority **must** work with people to establish whether they are able to manage all aspects of their direct payments. Open, honest and frank discussions with the individual **must** take place to identify any areas of managing the direct payments they find difficult.
150. Where difficulties are identified, a local authority **must** ensure the right level of support to overcome this is available. Individuals **must** not be refused direct payments purely because they are unable to manage, or are apprehensive about managing, all or part of one. A local authority, in partnership with the person, **must** explore all the options in supporting the individual to manage their direct payments; this may include support on a short term basis to help the individual to familiarise themselves or on a medium or long term basis.

## Capacity to Consent - Appointing a Suitable Person

151. In the case of adults with needs for care and support who lack capacity for the purposes of the Mental Capacity Act 2005, Direct Payments can be made to a willing and appropriate suitable person who receives and manages direct payments on their behalf. If an adult lacks capacity, and a suitable person is willing to receive direct payments on their behalf, the suitable person **must** be capable of managing the direct payments either on their own or with support. Provided that the suitable person is able to manage the direct payments, either with or without support, and is considered to have the individual's best interests at heart, the local authority **must** provide the direct payments to that suitable person.
152. In most instances the suitable person will be a close friend or family member involved in the care and support of the individual. Whatever the relationship a local authority **must** ensure that the best interests of the person lacking capacity are prioritised above all other considerations. Priority in respect of suitable persons **must** be given to the following:
- someone who has been awarded Lasting Power of Attorney (LPA) but not just a financial LPA on its own
  - someone who has been appointed a deputy for the person needing support by the Court of Protection under section 16 of the Mental Capacity Act 2005
  - someone who offers to act as a suitable person and who the local authority considers is acting in the best interests of the person lacking capacity
  - someone who the local authority themselves agree is suitable to act as a suitable person
  - someone employed by an organisation or third party appointed by a local authority to act as a suitable person.

153. A local authority **must** be satisfied that direct payment recipient's needs, and personal outcomes, can be met via direct payments involving a suitable person before putting the mechanism in place. The authority **must** be satisfied that the relevant suitable person is capable of managing all aspects of the direct payments or if that is not the case, that they can with appropriate support.
154. The suitable person **must** understand what is involved in managing direct payments. A local authority **must** provide, or arrange the provision as early in the process as possible, information and support detailing what receiving direct payments involves. A local authority **must** ensure that the suitable person fully understands they have responsibility for making the arrangements to obtain the care and support for the individual they act for and that the person's best interest **must** be central to the arrangements. A suitable person **must** be aware they are able to seek assistance if necessary.

### Making Payments

155. A local authority **must** be satisfied before it begins to make payments that the recipient, or their representative, understands all of the conditions they will be required to meet. Circumstances where the local authority might wish to consider seeking repayments **must** be discussed from the outset to dispel any misunderstandings.
156. A local authority **must** take into consideration the financial circumstances of the recipient when deciding whether to make a direct payment gross or net.
157. A local authority **must** work in partnership with direct payment recipients, or their representative, to agree how frequent their direct payments should be made. Recipients, or their representatives, **must** be in a position to be able to pay for care and support or pay the wages of staff employed when payments are due. The arrangements to pay direct payments **must** be reliable, as late or incorrect payments may jeopardise the recipients' ability to obtain the care and support they need. A local authority **must** put in place the most appropriate payment arrangement in each case and **must** ensure that each recipient is clear about the arrangements applicable to them before the direct payments commence.
158. A local authority **must** have arrangements in place for making additional payments in emergencies. Recipients or their representatives **must** be made aware of these procedures and how they obtain additional payments if an emergency arises. This information **must** be made known at the outset to alleviate further pressure on the recipient.

159. The flexibility inherent in direct payments means that recipients, or their representatives, **must** be able to adjust the amount of the direct payment they use from week to week. They **must** be able to 'bank' any unused payment to use as and when extra needs arise (this might particularly be relevant for those whose needs fluctuate). As long as overall the payment is being used to achieve the recipient's personal outcomes, the actual weekly pattern of care and support does not need to be predetermined.

### Addressing Risks

160. A local authority **must** work with direct payment recipients, or their representatives, to support them to take responsibility for identifying and managing any risks associated with the provision of their direct payments, particularly those in relation to their statutory responsibilities. Recipients **must** be supported to make choices about the risks they are comfortable with and about positive risk taking. Direct payment recipients **must** have access to timely information in connection with the risks identified and know how to get help when things go wrong. A local authority **must** support a recipient when they raise any concerns.

161. Local authorities **must** ensure their Disclosure and Barring Service (DBS) policies in relation to direct payments comply with current legislation and guidance. Local authorities **must** ensure that DBS checks, where required, comply with DBS safeguarding guidelines.

### Health and Safety

162. Local authorities **must** support direct payment recipients to be compliant with health and safety requirements arising from their direct payment. Local authorities **must** ensure they support those recipients who are employers with health and safety assessments of their employees and that resources are available to support this, particularly in relation to manual handling needs of their staff.

163. As part of the process local authorities **must** share with recipients, or their representatives, the results of any risk assessments that were carried out as part of the care and support assessment. This enables the individual to share the risk assessment with their employees and care and support providers.

### Direct Payment Recipients as Employers

164. A local authority **must** ensure that direct payment recipients, or their representatives, are fully aware of their legal responsibilities as an employer; this includes supporting recipients to ensure employers are legally entitled to work in the UK. Recipients or their representatives **must** receive the necessary support and resources to manage their employment responsibilities. A local authority **must** ensure that in each case, appropriate up to date liability insurance is in place and that recipients appreciate they have a legal duty of care for those they employ.

165. In promoting a person's personal outcomes, a local authority may authorise direct payments to pay a relative living in the same household as the recipient if they provide care and support or they manage the recipient's direct payments. When considering whether employing the relative will provide the best well-being outcome for that individual, the local authority **must** consider the views of the recipient before coming to a decision. Where appropriate safeguards are in place the employment of a relative living in the same household is often the most suitable way of providing care as it enables and supports continuity of care, recognition of personal choice and promotes early intervention.

In each case, the local authority, after considering the recipient's views, **must** be satisfied that the employment of a close relative living in the same household is the best way of promoting and delivering their personal outcomes.

### Financial Monitoring

166. Local authorities **must** ensure their financial monitoring arrangements for direct payments are proportionate. Reports which are completed by a direct payment recipient or their representative **must** be user friendly and not over burdensome.

167. Local authority financial monitoring arrangements **must** ensure no decision to cancel or suspend a direct payment is taken without the prior involvement of the recipient, or their representative, and the authority's direct payments care and support coordinators.

168. How the direct payment is determined, whether gross or net of any contribution imposed, **must** be decided in collaboration with the local authority and the recipient or their representative.

169. When auditing accounts consideration **must** be given to the flexibility inherent to direct payments and the fluctuating weekly expenditure they inspire. Sufficient assets **must** remain in a recipient's direct payment account to enable them to meet their care and support requirements and any employment commitments they have.

### When Difficulties Arise

170. A local authority **must** only make direct payments where it is satisfied the individual is capable of managing the payment, by themselves or with assistance. Where a local authority is concerned that an individual who wishes to receive direct payments will not be capable of managing the payments, even with support, it **must** ensure it takes into account, and subsequently records, all relevant factors as to why that decision is being made. The views of the individual and the help available **must** be recorded.

171. A local authority **must** not make blanket assumptions that whole groups of people will or will not be capable of managing direct payments. If a local authority concludes that an individual is not, even with assistance, able to manage a direct payment, it **must** discuss with them (and with any family, friends or representatives, as appropriate) the reasons for coming to such a conclusion. Where an individual, or their representative, does not agree with the authority's judgement they retain their right to access the local authority's complaints procedures.
172. If a direct payment recipient is unable to use their direct payments, a local authority **must** identify the reasons and in partnership with the person or their representative make appropriate modifications. This could include providing the direct payments to a representative, or a different representative than present, to receive and manage the direct payments on that individual's behalf (either on a temporary or permanent basis), where that representative is willing to do so.

### When to Seek Repayment

173. A local authority is able to require some or all of the money they have paid via a direct payment scheme to be repaid if they are satisfied it has not been used to secure the care and support a recipient requires, and their personal outcomes have not been achieved. They may also require repayment if the individual has not met any condition the local authority originally attached to the provision of the direct payments.
174. A local authority **must** assess when it is appropriate to seek recovery on a case by case basis, based on the individual circumstances. They **must** not operate a blanket policy of recovery that does not take into account the individual circumstances. Repayment **must** be aimed at recovering money that has been diverted from the purpose for which it was intended, or has simply not been spent at all. It **must** not be used to penalise honest mistakes, nor should repayment be sought where the individual has been the victim of fraud.
175. A local authority **must** take hardship considerations into account when deciding whether to seek repayments. A local authority **must** bear in mind there might be legitimate reasons for unspent funds, such as outstanding legal liabilities necessitating an individual to build up an apparent surplus (e.g. periodic employment payments for tax or national insurance purposes, or to pay periodically for care and support provision).

### Discontinuation of Direct Payments

176. Prior to discontinuing a direct payment local authorities **must** explore all feasible options to continue to meet a recipient's care and support needs via direct payments. Only when it is not possible to achieve this should the direct payment be discontinued.
177. A local authority **must** stop making a direct payment where it is satisfied that the recipient's care and support needs, or their personal outcomes, are not being met and it is not possible to amend the provision of the direct payment to do so.

178. Direct payment recipients, or their representatives, may at any time voluntarily decide to terminate their direct payments. If a local authority decides to withdraw direct payments, or they are voluntarily terminated, and the recipient has care and support needs which would otherwise be met by the authority it **must** make alternative arrangements for their delivery. A local authority **must** make recipients aware of the contractual responsibilities they have and the consequences they face when discontinuing direct payments.
  
179. In the event of a direct payment recipient's death the local authority **must** discontinue their direct payments. The situation **must** be handled with the utmost sensitivity and respect. The local authority **must** secure the name of an executor or next of kin to ensure the closure of the direct payment account and to make payment for any outstanding responsibilities without causing undue stress to the remaining relatives.

## Annex 1: Case scenarios to illustrate approach to eligibility of needs

### Learning Disabilities

Mr. Evans, a 45 year old man with learning disabilities who has been living with an elderly parent who has perhaps been over protective and done everything for him may need some form of reablement programme to help him move to new accommodation and take more responsibility for looking after himself. He is unable to carry out basic personal care activities and may need help to develop social networks. He will have short term intensive eligible needs where he has become very dependent but has the potential to develop skills to make him more independent. He will receive community based services alongside managed services delivered through a care and support plan. Productive social work and wellbeing services should, over time, support Mr. Evans to develop such independence skills that his needs no longer become eligible and he is either fully independent or is supported solely by community based services.

### Sensory Impairment

Mr. Davies recently presented with a serious sight impairment (blind) and may need to develop mobility, communication and life skills (e.g. meal preparation) from a rehabilitation officer. He may need some emotional support to come to terms with the fact that there is no further treatment available to improve his sight. He may also need specialist equipment. Where each of these can be provided by community based services - supporting Mr. Davies' capacity to self-care - then Mr. Davies will not be regarded as having eligible needs. Should any of these services not be available or be insufficient to help Mr. Davies to meet his personal outcomes, then that need will become an eligible need and services will be provided through a care and support plan.

### Dual sensory impairment

Iris, 78, has acquired deafblindness – she is hard of hearing and partially sighted. Following a specialist assessment for deafblind people by a suitably qualified assessor, Iris's personal outcome is identified as: I can socialise and engage with people in my local community.

They conclude that Iris will require a care and support plan, alongside accessing preventative community services, to enable her to meet her personal well-being outcome. Iris's deteriorating hearing and eyesight mean that she will require one-to-one support from a specialist support worker trained to work with deafblind people to support her in using transport to reach the town centre. She attends a weekly social group for older people at the community hall in her town and requires her specialist support worker to make social engagement at the group accessible to her.

## Older Person

Mr Jones is in hospital and his suitability for reablement service has been identified by hospital staff. Through a proportionate assessment, a reablement team identifies needs and agrees outcomes with Mr Jones and (carer) Mrs Jones. Mr. Jones has identified his personal outcomes:

1. I want to be able to wash and dress myself independently
2. I want to be able to have a bath but need help to get in and out of bath
3. I want to feel confident enough to be able to walk to the local shops
4. I want to take up some of my social activities I have drifted from over the last few years

Reablement is seen as a community based, preventative service and Mr Jones has no needs that require a managed care and support plan

At the review there is agreement that reablement has been a success and outcomes have been achieved. No further assistance is required. Mr and Mrs Jones are given information of how to get help should they require it in the future. Mr. Jones has received services that restore his level of functioning and without ever meeting the eligibility criteria for managed care and support.

Alternatively the review towards the end of the programme concludes that Mr Jones has recovered some measure of independence with support from the reablement programme but needs continuing care and support to help him with his personal care. Mr. Jones now meets the eligibility criteria and managed care and support services are delivered through a care and support plan. Community based services will continue where they are helping Mr Jones towards his personal outcomes and meeting his needs.

## Children & Family

Megan, aged 6, lives with her mother and two year old brother. She receives additional support at school but bullies other children and is aggressive towards her mother. Mother is struggling to cope with Megan's behaviour.

The home is poorly furnished with no heating although there are toys for the children. Proportionate assessment is undertaken involving the manager of a children's centre and a teacher: practical advice is provided around managing behaviour and improving living conditions at home. These services are provided although neither Megan nor her family require a managed care and support plan and their needs do not meet the eligibility criteria.

A possible scenario is that Mother improves her skills in managing Megan's behaviour and Megan's behaviour improves both at home and school. Megan is now making better progress at school. Mother has received help with furniture from a local charity. Contact ends as the family are achieving objectives and there is no need for formal social services input with a formal care and support plan.

An alternative scenario is that although safeguarding issues have not arisen there is no improvement in the family circumstances and there is a serious risk of family breakdown. The family will meet the eligibility criteria because it cannot meet their needs and outcomes without the authority providing care and support which will be managed through a care and support plan.

A third scenario is that there is no improvement in Megan's behaviour at home or school and Mother is increasingly finding Megan's behaviour very stressful to deal with. Mother takes Megan to school and admits to teacher that last night she struck Megan across the back of the head. Safeguarding procedures are now applied. Social services are now formally involved and more intensive support is provided and managed through a formal care and support plan. This does not mean that Megan and her family cannot access preventative services if they are still appropriate.

## Carer

Mrs Lloyd approached the Information, Advice and Assistance service as she is experiencing a level of carer's stress due to the caring role. Mrs Lloyd appeared tense and tired during the assessment but expressed that she did not feel that she required support from the general practitioner at this time. Mrs Lloyd stated that she had lost two stone in weight since May. However Mrs Lloyd states that when her husband gained weight so quickly they both went on a diet. It is now felt that her husband's weight gain was due to fluid retention. Mrs Lloyd expressed that she had disturbed sleep but it was not clear if this was due to anxiety or that her husband woke during the night. Mrs Lloyd expressed that she was coping and that their general situation at home had improved as her husband's health has improved.

Mrs Lloyd reported no difficulties with family or her husband's relationship and expressed that children and grandchildren are all very supportive.

Mrs Lloyd is over the age of retirement and did not express an interest in education pursuits

Mrs Lloyd stated that she did not feel that she was experiencing financial difficulty due to the caring role. Mr and Mrs Lloyd have not had a financial assessment to maximise their income and appear to be frugal by nature. A benefits advice referral will be made.

Mrs Lloyd has clearly been experiencing a degree of carer stress and an exploration of methods to relax and enjoy social activity may be of benefit to her. Mrs Lloyd was given details of the activities of and contacts for the local Carers Support Group which she felt confident in being able to access independently.

## Young Carer

Lee is a 14 year old male who is the sole carer for his single mother Sian. He provides all but personal care needs for his mum. Sian has a number of physical impairments leading to frequent medical interventions and mobility problems spending the majority of her time in her bedroom. Sian has also developed dependency on prescription drugs with additional side effects of heightened anxiety. Lee will frequently leave or not attend school and when in school Lee is frequently disruptive and challenging.

Lee is unable to meet his well-being outcome in relation to education and development without the provision of a support plan and so meets the eligibility criteria. But in this case the support plan involves the provision of care and support services to Lee's mum. Care and support services are provided for Sian during the day through a care and support plan and Sian is assisted to seek medical and psychiatric intervention to address her anxiety levels.

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## Annex 2: Principle of cross-border continuity of care within the United Kingdom

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### Principles of cross-border continuity of care within the United Kingdom

These principles set out how responsible authorities in the United Kingdom should ensure continuity of care for adults who receive care and support and are moving to another country within the United Kingdom.

The aims of the principles are to maintain the adult's wellbeing and prevent them from falling into crisis; ensure that the adult is at the centre of the process; and to require that responsible authorities should work together and share information in a timely manner to ensure needs are being met both on the day of the move and subsequently.

Responsible authorities should meet the adult's assessed care needs and support the outcomes they want to achieve. It is recognised that those needs may be met in a different way when the adult moves to the new country.

These principles should be applied in a manner consistent with existing legislation for the delivery of care and support in each of the four UK countries.

The principles of cross-border cooperation are:

1. Responsible authorities should ensure a person-centred process and take into account the outcomes an adult wishes to achieve.
2. Responsible authorities should work together and share information about their local care and support system and services.
3. The adult moving should be given relevant information, in an accessible format, about local care and support provision in the authority they are moving to.
4. Responsible authorities should work together to support a move across national boundaries to ensure the adult's care and support is continued during the move.
5. Responsible authorities should share relevant information about the adult's care and support needs and any other information which they believe necessary in a timely manner and with the consent of the adult involved.

### Definition

'Responsible authorities' means the local authority, Integration Authority or Health and Social Care (HSC) Trust responsible for the assessment of an adult's care during the period of their move.