

Factsheet 41w ● April 2018

Social care assessments for older people with care needs in Wales



Age Cymru Advice

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1 Information about this factsheet

This factsheet is one of a number of Age Cymru factsheets to provide information about your rights to advice, help and practical support from the adult social care system run by local authorities. In the sections that follow, you can find information on the process in Wales for:

- Obtaining a social care assessment for your care and support needs (whether you are someone who needs care yourself, or you are a carer).
- How the social care needs assessment will be carried out and what will be looked at.
- How the local authority decides who is eligible to receive care and support services following completion of the assessment.
- Working out a care plan for meeting your eligible care and support needs.
- Pursuing any concerns or complaints you have in regard to the assessment process or subsequent services received from the local authority (either directly, or services that they commission for you from another provider).

This factsheet can be seen as underpinning Age Cymru's other factsheet titles on social care – i.e. it covers the assessment process as a whole, whereas other factsheets go on to look at specific issues that may 'flow out' of the assessment; for example, the financial assessment for paying for care and whether the care services will be delivered in your own home, or in a care home environment.

A short, introductory summary of the social care assessment process can be found in section 2 below. Other parts of the factsheet then go on to examine particular elements of the process in further detail.

The other related titles that, depending on circumstances, you may want to read in conjunction with this factsheet are:

- 6w *Finding help at home in Wales;*
- 46w *Paying for care and support at home in Wales;*
- 42w *Obtaining disability equipment and home adaptations in Wales;*
- 24w *Direct payments for community care services in Wales;*
- 76w *Intermediate care and reablement in Wales;*

- 29w *Finding care home accommodation in Wales;*
- 10w *Paying for a permanent care home placement in Wales;*
- 58w *Paying for temporary care in a care home in Wales;*
- 60w *Care homes in Wales: choice of accommodation when the local authority is assisting with funding;*
- 38w *Treatment of property in the means test for permanent care home provision in Wales;*
- 39w *Paying for care in a care home in Wales if you have a partner;*
- 40w *Deprivation of assets in the means test for care home provision in Wales;*
- 20w *NHS continuing healthcare and NHS-funded nursing care in Wales.*

Note: The information given in this factsheet is applicable in Wales. Different rules may apply in England, Northern Ireland and Scotland. Contact Age UK, Age NI and Age Scotland respectively for further information – see section 17 for their contact details.

1.1 Local authority social services departments

In this factsheet references to the ‘local authority’ or ‘council’ will refer to the *adult social services department of the local authority*. You might also see the relevant social services department referred to elsewhere using similar variations – for example:

- social care department;
- adult social services;
- older persons’ department; or
- older persons’ team.

Adult social services teams are responsible, among other duties, for assessing people’s need for ‘care and support’ or ‘social care’ services and deciding whether those needs meet the eligibility criteria.

Information on how to find the contact details for your local authority social services department can be found in section 2.1 below.

1.2 The Social Services and Well-being (Wales) Act 2014

This Act was fully implemented in April 2016 and is the main legislation that covers the social care system in Wales, including:

- the social care assessment process;
- related rules in regard to arranging and paying for residential care homes or nursing care homes;
- rules in regard to arranging and paying for care at home and/or other non-residential services;
- the guidance documents that local authorities must use when assessing needs; and
- the guidance documents that local authorities must use when means testing people who may need to pay towards their services.

Many of the sections in this factsheet (and other Age Cymru factsheets on social care topics) will use this Act – and the Welsh Government guidance for local authorities which accompanies it – as a main source of information. References will be provided in the text where relevant.

1.3 Welsh Government Code of Practice documents – guidance for local authorities to follow when conducting social care assessments

In common with many other pieces of legislation, there are Codes of Practice (CoP) that accompany the *Social Services and Well-being (Wales) Act*. The CoP guidance documents are backed by law and aim to assist individuals, professionals and organisations to work within and comply with the Act – i.e. they are written in plainer English and are more straightforward to understand than the actual Act/regulations.

Local authorities must act in accordance with the codes of practice and their requirements when carrying out their social services functions. The Code of Practice documents include the following¹:

¹ A full list is not included in this factsheet – for example, there is a Code of Practice in relation to Part 6 of the Act that covers social services duties towards “Looked After and Accommodated Children”, which is not relevant to the content of this factsheet.

- *Code of Practice and guidance on the exercise of social services functions and partnership arrangements in relation to **part 2 (General Functions)** of the Social Services and Well-being (Wales) Act 2014.*
- *Code of Practice on the exercise of social services functions in relation to **Part 3 (Assessing the needs of individuals)** of the Social Services and Well-being (Wales) Act 2014.*
- *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.*
- *Code of Practice on the exercise of social services functions in relation to **Part 4 (direct payments and choice of accommodation)** and **Part 5 (charging and financial assessment)** of the Social Services and Well-being (Wales) Act 2014 (version 3 – April 2018)*
- *Code of Practice on the exercise of social services functions in relation to **Advocacy** under **Part 10** and related parts of the Social Services and Well-being (Wales) Act 2014.*

Note: The Social Care Wales website has links to all of the CoP guidance documents at:

www.socialcare.wales/hub/sswbact-codes

2 Local authority social care assessments – an overview of the process

The assessment and service provision process will generally consist of four main parts:

- An assessment of all the presenting needs and circumstances.
- A decision as to whether any of the assessed needs should be met by the local authority under the eligibility criteria (i.e. a decision to provide services).
- If so, the nature and extent of services to be provided (the care and support plan).
- Financial assessment as appropriate (to determine how much you will need to contribute towards the cost of the services).

These stages should be undertaken separately, although in practice this may be difficult to distinguish.

2.1 Initial contact with the local authority and making a referral

There are a number of ways in which your situation can be brought to the attention of the local authority, including:

- a self-referral;
- a referral from a carer, friend or family member; or
- from a professional such as your GP, with your permission. It may also be a doctor or nurse in a hospital setting, should you need help at home following your discharge from hospital.

Note: Finding contact details for the local authority's social services department

Contact details for your local authority should be available in your local telephone directory; from your town hall, local council offices; or a local Age Cymru or Citizens Advice Bureau should be able to provide them. If you have internet access, a list of all the local authorities in Wales, together with links to their individual contact details, can be found on the Welsh Government's website at:

www.gov.wales/topics/localgovernment/unitary-authorities

2.2 Needs assessment for the person with care needs (and, where relevant, also an assessment for their carer)

The first step in obtaining help from the local authority social services department is to ask for an assessment of your needs. The local authority will generally not be able to assist you until it has first carried out the assessment. This may be referred to by a number of similar terms, such as:

- social care assessment;
- community care assessment;
- care needs assessment; or simply
- needs assessment.

Legal duty to carry out an assessment

The local authority has a legal duty to carry out an assessment of anyone living in its area who *may* need community care services, once it becomes aware of this need. The assessment must take into account *all* aspects of your needs.

An older person would nearly always be entitled to a needs assessment itself (though note that this wouldn't necessarily mean they would be deemed eligible for services as a result – this would depend on the level or extent of their needs that are identified in the assessment).

Note: The right to a needs assessment is not affected by the level of your financial resources or other circumstances.

Carers

If you get help from a friend or family member (a carer), your carer's own needs and opinions should be considered and taken into account as part of your own assessment.

Carers also have a right to their own assessment in parallel or sometimes jointly with yours.

2.3 Eligibility criteria

After the completion of a needs assessment, based on the results, the local authority will decide whether or not it should provide or arrange social care services for you.

The authority must use national eligibility criteria to make this decision.

Where applicable, the local authority will also need to decide if someone's carer has support needs that meet the eligibility criteria.

2.4 Provision of care and/or support services

Where there are eligible needs

Having established that your identified needs fall within the national eligibility criteria (that you have ‘eligible needs’), the local authority then has a **legal duty** to arrange or provide services for you to meet those needs – see sections 3, 8 and 10.

If needs are of a lower level and do not meet the eligibility criteria

If your needs are identified as being of a lower level and don’t meet the eligibility criteria, Welsh Government guidance advises that:

“In such instances the [authority’s] information, advice and assistance service or other preventative and community based services such as those from social enterprises [the] third sector [or] user-led services” must be drawn to the attention of the person who has had an assessment². These other services should enable the individual to meet the lower level needs that they have.

2.5 The means test

Social care support is generally means tested. The local authority will carry out a financial assessment (means test) to establish how much you should contribute towards the cost of providing the required services to meet your assessed care needs.

Note: There are differences in means testing for home care/other non-residential care services and care home provision – see section 11 below for further information on the rules for both types of provision.

In most cases you will have to pay at least something towards the cost of your care, though in some situations people may be “entitled to care and support at no charge”³ (for example, someone receiving non-residential care services who has a low income may fall within this bracket).

² Social Services and Well-being (Wales) Act 2014: Part 4 Code of Practice (Meeting Needs), Welsh Government

³ Social Services and Well-being (Wales) Act 2014: Part 4 and 5 Code of Practice (Charging and Financial Assessment), Welsh Government (version 3 – April 2018)

The local authority must publish information about its charging procedure and general fee levels for particular services where relevant. It must also follow national Welsh Government guidelines when processing the means test – see section 11 below.

2.6 The care and support plan

Following an assessment by a local authority where it is identified that you have ‘eligible needs’, a care and support plan must be discussed, agreed and written down.

The service user or their representative should be provided with a copy of it. The care and support plan documents the services you have been assessed as needing and how they will be arranged – see section 8. You should have as much input as possible into this process to reflect your needs and wishes.

Note: Support plans for carers

The Welsh Government’s guidance advises that local authorities must also provide “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 [care] needs”⁴.

2.7 Reviews of services provided

Once a service is provided, it must be checked or reviewed to confirm that it is appropriate and safe, that there haven’t been any new changes in your needs and that the funding is adequate. Further information on the review and re-assessment process can be found in section 9 below.

⁴ Social Services and Well-being (Wales) Act 2014: Part 4 Code of Practice (Meeting Needs), Welsh Government

2.8 What if NHS care is required at some point during the social care process?

It may be the case that at some point during the social care process – for example at the initial referral stage, or perhaps as a result of needs explored during the assessment process – it is recommended that you require health services that are the responsibility of the NHS (either in conjunction with local authority services, or health services on their own). In cases where both health and social care services are needed, the NHS and local authority social services should work together in an integrated manner. NHS services will generally be free at the point of delivery.

3 Meeting care needs – what sort of services might the local authority provide?

Depending on individual needs, a wide range of services may potentially be available; for example:

- **Assistance in the home, such as help from a personal care assistant to wash or get dressed** – also see Factsheet 6w *Finding help at home in Wales* for more information.
- **Respite care in various forms.**
- **Day care (i.e. away from the home in, for example, local authority run day centres for older people).**
- **Night-sitting services.**
- **Community transport.**
- **Provision of aids, equipment or adaptations to help with daily living tasks and for home safety** – also see Factsheet 42w *Obtaining disability equipment and home adaptations in Wales*.
- **Pre-prepared meals delivered to someone at home (meals on wheels).**
- **Preventative and rehabilitation services (including reablement)** – also see Factsheet 76w *Intermediate care and reablement in Wales* for more information.
- **Services to meet psychological, social and cultural needs.**

- **Assisting in finding someone a place in supported housing** – also see Factsheet 64 *Specialist housing for older people* for more information.
- **Care provided in a residential care home or nursing home** – also see Factsheet 29w *Finding care home accommodation in Wales* and Factsheet 10w *Paying for a permanent care home placement in Wales* for more information.
- **Advice and information about services, welfare benefits, luncheon clubs etc** – local authorities have certain duties in regard to providing information and advice (see section 6 below).
- **Services in conjunction with the NHS where needs overlap** – also see Factsheet 44w *NHS services in Wales* for more information.

Local authorities can provide services themselves, using staff they employ directly, or make arrangements for private or voluntary sector organisations to provide the care on their behalf. Alternatively, direct payments can also be provided – see section 10.3 below.

4 The local authority's duty to carry out an assessment

4.1 Duty to carry out an assessment for someone who requests one

The Welsh Government's assessment guidance to support the *Social Services and Well-being (Wales) Act* states that:

“A local authority must offer an assessment to any adult where it appears to that authority the adult may have needs for care and support”.

The authority “must assess whether an adult does have [a need] for care and support and if so, what those needs are”. In addition, “the assessment must focus on the outcomes the adult wishes to achieve in his or her daily life and the extent to which the provision of care and support, preventative services, or the provision of information, advice or assistance, could contribute to the achievement of those outcomes”.

“The assessment itself must be proportionate to need and involve the adult and where feasible, the adult’s carer”⁵.

In practice, this wording would suggest you can ask for – and should be provided with – a needs assessment by the local authority if you are experiencing any sort of difficulties with:

- **managing your daily living activities and tasks; or**
- **are finding it hard to get out of the house.**

Note: If you are refused an assessment, you could consider making a complaint about this – see section 15 below. If you are **already receiving** a service and you feel that your needs have changed, you can ask for a review / re-assessment – see section 9 below.

4.2 **Does the local authority have any duty to carry out an assessment where it is requested by another person?**

As indicated above in section 2, local authority referrals for social care assessments can come from various sources, such as the GP or a district nurse. Additionally, someone who is not actively ‘caring’ for another person can ask for an assessment on the person’s behalf, for example if they are a relative or neighbour.

However, this type of action should generally be discussed and agreed in advance with the person who is the subject of the referral.

That being said, if someone lacks the mental capacity to agree to an assessment, then they may need a third party to make a referral in their best interests – see section 8.6 below for further information on this issue.

In most cases a local authority has no power to make a person accept help against their will – however, see section 13 below for additional information.

⁵ Social Services and Well-being (Wales) Act 2014: Part 3 Code of Practice (assessing the needs of individuals), Welsh Government

The individual who may be assessed is the most important person in this process and the local authority should liaise directly with them on receipt of a referral or other relevant information to confirm whether they wish to have an assessment and to check whether a third party referral has been made for an appropriate reason.

4.3 Local authority duty to offer an assessment if you are a carer

The Welsh Government's assessment guidance states that:

“A local authority must offer an assessment to any carer where it appears to that authority that the carer may have needs for support”.

The authority “must assess whether the carer has [a need] for support (or is likely to do so in the future) and if they do, what those needs are or are likely to be”. A factor that should be examined in the assessment includes the “extent to which the carer is able and willing to provide the care” (and, if they are able and willing, will this continue to be the case going forward – as an example, if the carer “works or wishes to work and whether they are participating...in education, training or leisure activities” should be looked at).

The authority “must involve the carer and where feasible the person for whom the carer provides or intends to provide care in the assessment”⁶.

Carers can request an assessment, even if the person cared for does not want one for their needs.

Note: A carer is defined in the *Social Services and Well-being (Wales) Act* as a person who provides or intends to provide care for an adult (or a disabled child). “In general, professional carers who receive payment should not be regarded as carers for the purposes of the Act, nor should people who provide care as voluntary work. However, a local authority can treat a person as a carer even if they would not otherwise be regarded as a carer if they consider that, in the context of the caring relationship, it would be appropriate to do so. A local authority can treat a person as a carer in cases where the caring relationship is not principally a commercial one”⁷.

⁶ Ibid

⁷ Ibid

4.4 Can the local authority refuse to assess you?

Section 4.1 above set out how there is a low threshold in regard to people having a right to an assessment (that is, a low threshold in terms of having your needs looked into, so it doesn't necessarily mean that you will be eligible for service provision afterwards).

The latest Welsh Government guidance also emphasises that the duty on local authorities to offer an assessment applies, “regardless of the **level** of need for care and support”⁸ (emphasis added) – i.e. indicating that you should be offered an assessment even if your needs are of a relatively low level.

Sometimes, however, local authorities may ‘screen’ people before agreeing to carry out an assessment. This can take the form of asking a few questions on the telephone to establish whether the person’s needs might qualify them for help from social services. Simple assessments can be carried out by phone, but those carrying out the task must have the adequate skills to make this type of judgement.

Local authorities should not over-use such processes, in order to avoid screening people out of the assessment process before sufficient information is known about them.

If you are refused an assessment and you feel therefore that your needs have not properly been considered, you should write to formally request an assessment, state your case, and ask the local authority to provide written reasons if it is not willing to carry one out. Make sure your local authority is fully aware of your situation and has all the relevant information. If the situation is still not resolved following this, you can make a complaint to the local authority – see section 15.

Financial circumstances

The Welsh Government’s guidance states that the local authority duty to offer an assessment of needs applies “**regardless of the level of...the adult’s financial resources**”⁹.

⁸ Ibid

⁹ Ibid

Someone's finances should also not affect the level or detail of the assessment process. In regard to carers, the guidance further emphasises this point, stating that the duty to assess "applies regardless of the...financial resources [the carer] has or the financial resources of the person needing care¹⁰.

5 Who will carry out the assessment?

The social care assessment will be carried out by a representative of the local authority – usually a **social worker**¹¹, an **occupational therapist**, or both. Sometimes a less senior member of the social services department will carry out an assessment, though this would need to be "under the supervision of a registered social work or social care practitioner"¹². Often, a whole range of other professionals may also be involved in the process. For example:

- Various NHS staff, including community nursing teams.
- Mental health teams.
- Substance misuse specialists.
- Sensory needs teams.
- Local authority housing staff.

Who will be involved will depend on the perceived level of need of the service user. For example it would be acceptable practice for an assessment to be undertaken by only "a single practitioner where that practitioner would not need additional specialist advice or assessments to determine eligibility". However, where there are greater needs a "compendium of one or more professional assessments" may be required and will all feed into the final eligibility decision¹³.

¹⁰ Ibid

¹¹ Sometimes social workers might be referred to as 'care managers' in this context

¹² Social Services and Well-being (Wales) Act 2014: Part 3 Code of Practice (assessing the needs of individuals), Welsh Government

¹³ Ibid

Note: A ‘designated lead practitioner’

The Welsh Government’s guidance instructs local authorities that a “designated lead practitioner must be named and lead the assessment process”. They “will be responsible for liaison with all other practitioners involved in the assessment”¹⁴.

6 Local authority ‘Information, Advice and Assistance’ services, availability of advocacy and preventative approaches to social care

6.1 Information and advice

Section 17 in Part 2 of the *Social Services and Well-being (Wales) Act 2014* places duties on local authorities to provide “information, advice and assistance...relating to care and support”.

Their service “**must** include, as a minimum publication of information and advice on how the care and support system operates in the local authority area...the types of care and support available...how to access [this] and how to raise concerns about the well-being of a person who appears to have needs”¹⁵.

An important element of each authority’s information and advice service should be a focus on early intervention and preventative services – see below.

¹⁴ Ibid

¹⁵ Social Services and Well-being (Wales) Act 2014: Part 2 Code of Practice (General Functions), Welsh Government

6.2 The importance of a preventative and ‘person-centred’ approach to social care assessments

Early intervention and prevention

In the *Social Services and Well-being (Wales) Act 2014*, the Welsh Government has placed a lot of emphasis on the role of social care services in preventing “escalating need” and ensuring that the “right help is available at the right time”¹⁶, believing that this is the best approach to help people “achieve their personal outcomes, and explore options for meeting their care and support needs”¹⁷.

Promoting wellbeing and a person-centred approach to the assessment process

According to the Welsh Government’s guidance, “well-being underpins the whole [assessment] system, linking through to the role that early intervention and prevention can play in promoting well-being [and by the individual] being involved in the design and operation of services”¹⁸. Furthermore, all assessments should start “from the presumption that an adult is best placed to judge their own well-being [needs]”¹⁹.

The *Social Services and Well-being (Wales) Act* guidance provides examples of what may constitute **important factors in determining a person’s wellbeing**, including:

¹⁶ Social Services and Well-being (Wales) Act 2014: The Essentials, Welsh Government, 2015

¹⁷ The guidance suggests that a local authority’s information and advice service – as discussed above in section 6.1 – can be considered as a preventative service in its own right, as ideally it will provide assistance prior to someone reaching a “crisis point” – Social Services and Well-being (Wales) Act 2014: Part 2 Code of Practice (General Functions), Welsh Government.

¹⁸ Social Services and Well-being (Wales) Act 2014: Part 2 Code of Practice (General Functions), Welsh Government

¹⁹ Social Services and Well-being (Wales) Act 2014: Part 3 Code of Practice (assessing the needs of individuals), Welsh Government

- Making sure someone has their rights.
- That someone is “physically, mentally and emotionally happy”.
- They are “protected from abuse, harm and neglect”.
- They are able to enjoy “positive relationships with family and friends”.
- People are enabled to feel part of the community, have a social life “and enough money to live a healthy life”.
- They have a safe and comfortable home²⁰.

As one of the central planks of the Act is to ensure that “people who have care and support needs [can] achieve well-being”²¹, if following a social care needs assessment, services are not provided that meet these sorts of objectives, you could query the local authority’s decision (and potentially make a complaint – see section 15 below).

Note: See section 7.1 below in regard to ‘useful tips’ if you are having an assessment of your needs.

6.3 **Advocacy: local authority duties to ensure access to advocacy services or arrange for an ‘independent professional advocate’**

Related to the information above – outlining the local authority duties in regard to information and advice and the principle of a ‘person-centred’ assessment – is the subject of **advocacy**²².

²⁰ Social Services and Well-being (Wales) Act 2014: The Essentials, Welsh Government, 2015

²¹ Ibid

²² The Welsh Government’s guidance provides a number of definitions for advocacy, for example: “Advocacy supports and enables people who have difficulty representing their interests, to exercise their rights, express their views, explore and make informed choices. Independent Advocacy supports the person regardless of the demands and concerns of others. It challenges the causes and effects of injustice...and abuse and upholds human rights. (OPAAL National Forum, 2008)” and “Advocacy is taking action to help people say what they want, secure their rights, represent their interests and obtain services they need. Advocates and advocacy schemes work in partnership with the people they support and take their side. Advocacy promotes social inclusion, equality and social justice. (Action for Advocacy, 2002)”.

If you have difficulty in expressing your views and needs and feel that this would be excessively difficult within the assessment process, then an advocacy service may be of help to you. The *Social Services and Well-being (Wales) Act 2014* **strengthened** people's rights to advocacy support in relation to the social care assessment process. The guidance advises that a key role of each local authority's information, advice and assistance service "will be to provide individuals with information about the range of advocacy services in their area and to assist them to access it where required as part of achieving their well-being outcomes".

In many instances, the requirement on the authority will be to make people aware of the availability of advocacy support, should they wish to utilise this; in others the authority will have a *specific duty* to "arrange an independent professional advocate" for someone²³.

General advocacy duty

The Welsh Government has produced a Code of Practice specifically on the subject of advocacy in the context of the *Social Services and Well-being (Wales) Act* which states that, in order to have voice and control, "an individual must be able to feel that they are a genuinely equal partner in their interactions with professionals. It is, therefore open to [them] to exercise choice and to **invite any advocate** to support them in expressing their views, wishes and feelings"²⁴ (emphasis added).

In this context, you could ask a family member or friend to act as an informal advocate for you, or you could contact an organisation that operates an advocacy service (such as a local Age Cymru organisation, or other charitable or voluntary group).

²³ Social Services and Well-being (Wales) Act 2014: Part 10 Code of Practice (Advocacy), Welsh Government

²⁴ Ibid

The appointment of an ‘independent professional advocate’

Local authorities are advised in the guidance that they “**must** arrange for the provision of an independent professional advocate when a person can only overcome the barrier(s) to **participate fully in the assessment, care and support planning, review and safeguarding processes** with assistance from an appropriate individual, ***but there is no appropriate individual available***” (emphasis added)²⁵.

In other words, this would be where an individual is finding it difficult to express their views in the assessment process, but there are no immediate, or suitable, family or friends to help them, nor is the individual able to independently access, for example, an advocacy service provided by a voluntary organisation.

Note: The Welsh Government have recognised the potential for confusion where people could qualify for different statutory entitlements to advocacy at the same time – for example, as well as being owed a duty under the *Social Services and Well-being (Wales) Act*, an authority “may identify a duty to provide an Independent Mental Capacity Advocate (IMCA) under the Mental Capacity Act 2005” (there is some extra information on the *Mental Capacity Act 2005* in section 8.6 below).

In these instances the authority “must meet its duties in relation to working with [the] IMCA...as well as those in relation to an independent professional advocate under the [*Social Services and Well-being (Wales)*] Act”. An advocate can potentially act in **both** roles as the duties of each “have been closely aligned so as to facilitate this”²⁶.

²⁵ Ibid

²⁶ The aim here is to achieve “continuity in individuals’ advocacy needs, minimising duplication including the need for the individual to have to repeat their experiences and desired outcomes to different advocates. Wherever possible, the parties [involved] should...agree a single advocate to support the person” – Social Services and Well-being (Wales) Act 2014: Part 10 Code of Practice (Advocacy)

7 Issues and areas that the social services team must look into as part of a care assessment

7.1 Useful tips for the person being assessed (and where applicable their carer)

When you are going through the assessment process – whether you are an older person with care needs or a carer – it is important to make sure that you give your social worker the full picture.

Resist the temptation to say that things are better than they are, or that you are managing when in reality you are struggling – you will only get help if the local authority realise that you need it.

In recent years local authorities have responded to financial cuts by concentrating mostly on care services to make sure that people can function – i.e. get up, get dressed, keep clean etc – and they have ignored wider social needs, for instance support to enable you to still get out and about; be involved in your local community, and prevent you getting isolated at home.

The emphasis in the *Social Services and Well-being (Wales) Act* on both **prevention** and various **wellbeing** factors means that, in theory, it should be harder for local authorities to ignore these wider ‘quality of life’ social care issues. It is also worth noting that Welsh Government guidance says that all the wellbeing factors listed in the Act – see section 6.2 above – **“have equal importance”**²⁷.

Again, these social needs may not be considered *unless* you point them out and be clear about how important they are to you.

If you feel that your assessment does not fully reflect all the personal and social care issues that you have, then you can ask for them to be included. If that is refused then you are entitled to lodge a complaint – see section 15 below for further information.

²⁷ Social Services and Well-being (Wales) Act 2014: Part 2 Code of Practice (General Functions), Welsh Government

Note: As indicated in earlier sections of this factsheet, “before undertaking any assessment [social services staff must] consider whether or not the person whose needs are being assessed would benefit from the presence of a carer, family member, friend or advocate”²⁸.

Where there is a carer

During the assessment process, staff should not make any assumptions about the level or quality of support that might be available from a carer without discussion and agreement with the carer and the cared for person.

If you are a carer, or you are planning to care for someone else, think about the help you feel you would be able to give, as well as the tasks that you will not be able to do, and make sure that you give this information to the person carrying out the assessment.

Remember that there is no legal obligation on you to provide care and that you are entitled to a life of your own alongside your caring role. As indicated above in section 4.3, as a carer you are also entitled to an assessment of your own needs.

7.2 The ‘National Assessment’ process

The *Social Services and Well-being (Wales) Act* introduced a national assessment and eligibility criteria “based on a comprehensive analysis of **five** inter-related elements” (emphasis added).

The table which follows quotes from the Welsh Government’s assessment guidance to illustrate how social services staff carrying out social care needs assessments must look into each of the elements.

The national assessment and eligibility criteria detail all the issues and areas concerning a person’s potential care and support needs that a local authority should look into as part of a care assessment.

²⁸ Social Services and Well-being (Wales) Act 2014: Part 3 Code of Practice (assessing the needs of individuals), Welsh Government

<p>The five main elements of the assessment process: an authority must “assess and have regard” to the following:</p>	<p>Guidance to local authority social services departments in regard to each of the elements (as contained in Code of Practice documents and accompanying regulations for the Social Services and Well-being (Wales) Act)</p>
<p><i>“The person’s circumstances”.</i></p>	<p>Examples of issues that may demonstrate a need for care and/or support services include²⁹:</p> <ul style="list-style-type: none"> ● Making sure someone has their rights. ● Someone is (or will be) unable to carry out basic personal care activities (e.g. getting out of bed, washing, dressing, bathing). ● Someone is unable, or will not have the opportunity, to achieve or maintain “a reasonable standard of health”. ● Someone is (or will be) unable to carry out “basic household activities and daily routines”³⁰ (e.g. shopping, cleaning). ● If the person is a carer, they are unable, or are likely to become unable, to provide some or all of the necessary assistance to the person they care for. <p>The authority’s analysis of the presenting needs shouldn’t be considered in isolation, but in the context of “the effect that the needs have on the person or family concerned and/or by reference to the person’s [unique] circumstances. The process of determining eligibility must also take account that individual needs may form part of a combination of needs that affect the person concerned”³¹ (emphasis added).</p>

²⁹ The list in this table is not an exhaustive list. Local authorities should look at each case individually

³⁰ Social Services and Well-being (Wales) Act 2014: Part 3 Code of Practice (assessing the needs of individuals), Welsh Government

³¹ Ibid

<p><i>The individual's "personal outcomes"</i></p>	<p>People's personal outcomes must be identified during the assessment. Although these will be unique to each person, they will relate to the wellbeing definitions in the Act (see section 6.2 above for further information).</p> <p>"To meet the eligibility criteria for local authority provided or arranged" services, someone's care and support needs must relate to the following personal outcomes³² (it can be seen that these overlap somewhat with the 'person's circumstances' element above):</p> <ul style="list-style-type: none"> ● "ability to carry out self-care or domestic routines [and to] communicate; ● protection from abuse or neglect; ● involvement in work...or in leisure activities; ● maintenance or development of family or other significant personal relationships; ● development and maintenance of social relationships and involvement in the community" (including "caring responsibilities for a child")³³.
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³² The following are the same whether it is an adult requiring care, or a carer who is being assessed

³³ Social Services and Well-being (Wales) Act 2014: Part 3 Code of Practice (assessing the needs of individuals), Welsh Government

<p><i>Any barriers to the individual achieving their personal outcomes</i></p>	<p>“A person is facing barriers to achieving their personal outcomes if something related to the individual’s condition or circumstances, or something outside their control, is preventing them from meeting [the] outcomes. In defining a barrier the assessment will need to take account of:</p> <ul style="list-style-type: none"> ● The information presented by the person, and/or their family or carer, and other agencies...about their needs...resources and risks. ● The professional judgement of the worker and their knowledge of the services or support which would be likely to be most useful to the individual and/or their family or carer [and] local information and guidance about available services”³⁴.
<p><i>Any risks to the person (or to other persons) if their personal outcomes are not achieved</i></p>	<p>“An evaluation of risk is essential to determining a need for care and support”. When examining “potential risks to meeting personal outcomes the practitioner and the individual should...consider the time-scale, predictability and complexity of the issues that are presented”. For example, “it is possible for individuals to have several low risk elements which in themselves would not pose a threat to achieving personal outcomes, but the combination and how the risks interact will result in a more serious threat”.</p> <p>“The determination of eligibility must be informed by an appreciation of the balance between ensuring that the health and safety of vulnerable adults and other people is not put at risk; against curtailing the choice, autonomy and independence of particular individuals”. The analysis of this balance may “lead to a requirement for a care and support plan that includes understanding and anticipating activities which will invoke risk either to the individual and/or others and developing an action plan that can manage the situation appropriately”³⁵.</p>

³⁴ Ibid

³⁵ Ibid

<p><i>“The person’s strengths and capabilities”³⁶.</i></p>	<p>The local authority should take into account the skills and capacity of the person themselves, as well as support available from their family, friends or the wider community, “that can be marshalled to meet their needs and promote their well-being”.</p> <p>“People’s needs fluctuate and circumstances change and the assessment process must provide for [social services staff] to look for and anticipate those changes” – the guidance suggests that “the pattern of: <i>“these needs I can meet/these needs I need help with”</i> will vary over time and circumstance for each person”³⁷. The assessment process must take this into account when eligibility decisions are reached.</p>
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7.3 Information that the local authority should capture in their assessment documentation

All of the following should be recorded (this is not an exhaustive list):

- Does the person have a carer (i.e. role “played by unpaid carers...partners and other family members in [a] person’s care”)? If so, are they “willing and able” to continue to contribute? Were they offered an assessment as well?
- “Is the person at risk of abuse or neglect” (if so, what action has been taken)?
- “Does the person consider themselves disabled? Do they wish to be on the relevant disability register?”
- Are there any concerns regarding the mental capacity of the person being assessed? Are there any considerations regarding the Deprivation of Liberty Safeguards (DoLS)? – see section 8.6 below for further information on these issues.
- Is the assessment the first one that the person has had, or a re-assessment (e.g. following a review)?

³⁶ Ibid

³⁷ Ibid

- “Who requested the assessment”?
- “Are assessments being made separately, against the wishes of families, carers and cared-for people?” (If yes, the local authority must explain the rationale for this).
- “Confirmation that [the] person agrees to what is recorded (this could include a note of differing views of [a] practitioner and [the] person [or] family, etc)”.
- “Confirmation that a copy of the assessment has been offered to [the] person” (a copy must always be offered and provided).
- “Actions to be taken by the local authority and other organisations and/or persons to help the [individual] achieve their identified personal outcomes. This will include statements on **how** the actions “contribute to the achievement of the [particular] personal outcome or otherwise meet needs identified by the assessment”. This applies whether the needs are to be met “through the provision of care and support...through community based or preventative services, the provision of information, advice and assistance, or by any other means”³⁸.

7.4 The local authority’s eligibility decision following your assessment – the ‘Eligibility Tool’

Local authorities are advised that for **each** identified need, they must record one of the following eight as applying:

³⁸ The Social Services and Well-being (Wales) Act 2014: National Assessment and Eligibility Tool – Common Recording Requirements for Assessments of Adults, Children and Carers, Welsh Government

1	No care and support needs to be met.	
2	A further specialist / more comprehensive assessment is required in regard to particular need/s (scoring would need to take place again, following this).	
3	There are needs, but can be met through general information and advice.	
4	There are needs, but they can be met through “preventative services”.	
5	“Needs can be met, wholly or in part by the individual themselves (with or without the assistance of others)”.	
6	Other matters can contribute to achievement of personal outcomes, “or otherwise meet the needs”.	
7	<p>The person’s needs can “only be met through a care and support plan”.</p> <p>A carer’s needs can only be met through a “support plan”.</p> <p>“Needs are eligible”.</p>	<p>For these first six, the authority will have identified that needs can be met “through signposting to preventative services or met in another way”. Therefore a formal care and support plan is not required and “the need will NOT be eligible”³⁹ (i.e. there will be no legal duty on the local authority to provide or arrange services for you, though they must provide relevant advice).</p> <p>A formal care & support plan is required in these circumstances.</p> <p>The authority has a <i>legal duty</i> to arrange or provide services to meet the person’s eligible needs⁴⁰.</p>

³⁹ ‘How to access care and support’ flowchart, Social Care Wales website: <https://socialcare.wales/hub/sswbact-assessment-tool>

⁴⁰ Ibid

<p>8 The authority considers it necessary to meet needs “in order to protect the person from abuse or neglect” (or the risk of this occurring)⁴¹.</p> <p>Safeguarding procedures will need to be applied – see Age Cymru’s Factsheet 78w <i>Safeguarding older people in Wales from abuse and neglect</i> for further information.</p>	<p>There is no need here “to consider or apply the determination of eligibility and the local authority must not apply [the usual assessment process] where to do so may prevent or delay [them] from making a response designed to protect and safeguard the person”⁴².</p> <p>Necessary care and support services must be put in place first; then full assessment can occur afterwards.</p>
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Local authorities must record the outcome of their assessment and eligibility decision on the eligibility tool. This record must include “all elements of the assessment...and the person should be provided with a copy”⁴³.

Note: The Welsh Government’s guidance on meeting care needs stresses that 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”. Also, the guidance emphasises that “in making a determination of eligibility there should not be an over reliance [by the authority] on any voluntary caring arrangements”. For example, they must make sure “that the ability of [a] carer to provide care is sustainable and that they comply with their general duty to promote...well-being”⁴⁴.

⁴¹ The Social Services and Well-being (Wales) Act 2014: National Assessment and Eligibility Tool – Common Recording Requirements for Assessments of Adults, Children and Carers, Welsh Government

⁴² Social Services and Well-being (Wales) Act 2014: Part 4 Code of Practice (Meeting Needs), Welsh Government

⁴³ Ibid

⁴⁴ Ibid

7.5 How quickly must an assessment be carried out?

There are no specific guidelines on how quickly a local authority must carry out a social care assessment following a request to do so. However, Welsh Government guidance states that an assessment must be **“timely and responsive to the urgency of the individual’s needs”**.

It goes on to state that, in cases where a more detailed or specialist assessment is required, the authority **“must ensure that there is minimum delay in completing the specialist assessment so that a care and support plan can be progressed quickly and should consider whether it is appropriate to put interim support in place”** (emphasis added)⁴⁵.

8 The care and support plan

8.1 People who are assessed, but have lower level needs

As discussed above, local authorities only have a legal duty to meet the needs of people where those needs are of a certain level that meet the national eligibility criteria.

In the case of those with lower level needs, the fact that they have had an assessment doesn’t necessarily mean they will subsequently be provided with a support plan – this is because the local authority can discharge its duties by offering information and advice on alternative ways for people to meet their needs (where the needs are found to not be sufficiently serious to warrant local authority services). The Welsh Government’s guidance confirms this as follows:

“Many individuals’...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 [to the person who has been assessed]. A record of how these needs will be met without a formal care and support plan must [however] be made on the assessment and eligibility tool”⁴⁶.

⁴⁵ Social Services and Well-being (Wales) Act 2014: Part 3 Code of Practice (assessing the needs of individuals), Welsh Government

⁴⁶ Social Services and Well-being (Wales) Act 2014: Part 4 Code of Practice (Meeting Needs), Welsh Government

8.2 The care and support plan for people with eligible care needs

Once the local authority has determined that you have eligible care needs for which it must provide or arrange services – i.e. the assessment has shown that you would be unable to achieve your personal outcomes without the services – your assessor must draw up a care and support plan with you. They must also provide you with a written copy.

The care plans should be periodically reviewed – see section 9 below for further information.

Note: Care plans to prevent abuse and/or neglect

A local authority must also draw up a care and support plan in instances where it appears to the authority “that it is necessary to meet the person’s needs in order to protect [them] from abuse or neglect”, or the risk of this⁴⁷ – see Age Cymru’s Factsheet 78w *Safeguarding older people in Wales from abuse and neglect* for further information on safeguarding.

This would be the case **even if under other circumstances the level of your needs might not actually meet the eligibility criteria** – if protection from abuse is required, the authority will have a duty to put in place a care and support plan on that basis alone.

The Welsh Government’s guidance advises that the care and support plan must include the following:

- The desired outcomes that are to be achieved from the support provided.
- Specific actions which the local authority and, where appropriate, other persons will take to help the person achieve those outcomes. Defined roles and responsibilities should be included for both professionals involved in delivering services and, where applicable, a person’s informal carer and/or family members.
- Information on how progress towards achieving the outcomes will be measured and monitored.

⁴⁷ Ibid

- A care plan review date.
- Any financial contributions which the service user has been assessed as needing to pay – also see section 11 below.
- In situations where some or all of a person’s needs are to be met via direct payments, a care and support plan must also contain information on which needs these are “and the amount and frequency of the direct payments”. See section 10.3 below for further information on direct payments and how they fit into the care planning system.

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”⁴⁸ (emphasis added).

8.3 Support plans for carers

Local authorities must also provide “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 [care] needs”⁴⁹.

Note: The guidance also stresses that 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”⁵⁰ (emphasis added).

8.4 The care and support plan co-ordinator

Local authorities must appoint a named member of staff to co-ordinate the preparation, completion and delivery of the care and support plan. This will also be the case where services are being provided for a carer.

The same staff member will have responsibility for overseeing the periodic review process of the care plan – see section 9 below for further details.

⁴⁸ Ibid

⁴⁹ Ibid

⁵⁰ Ibid

8.5 Where care and support may require a financial contribution

When someone's care and support plan identifies that the service/s they need may require a financial contribution towards the cost, "arrangements must be made to ensure the individual is clear about this, and that a financial assessment is undertaken"⁵¹ – see section 11 below for further information on means testing for social care services.

8.6 Meeting eligible care needs when someone lacks mental capacity

As discussed in sections of the factsheet above, the local authority should fully involve someone in discussions around their assessment and how best to meet their needs. *However*, if someone lacks the mental capacity to fully express their views or make important decisions about their day to day lives, this may not be possible. In these cases, the staff involved in the social care assessment process must adhere to the standards set out within the *Mental Capacity Act 2005 (MCA 2005)* and its accompanying *Code of Practice*.

Importantly, this Act stipulates that:

- People who *may* not be able to make certain decisions for themselves must be supported and empowered as much as possible to try and reach decisions themselves – that is, all practicable steps must be taken to help a person make their own decision before anyone concludes that they are unable to do so.
- People do have the right to make 'eccentric or unwise decisions' (i.e. a person is not to be treated as being unable to make a decision simply because the decision they make appears to be unwise to others).
- Where social care staff do have to make a decision on meeting someone's care needs on their behalf, those decisions must be reached in the individual's '**best interests**'. The concept of making a best interests decision is outlined in the MCA 2005 Code of Practice, available on the GOV.UK website at:

www.gov.uk/government/publications/mental-capacity-act-code-of-practice

⁵¹ Ibid

Further information can be found in Age UK Factsheet 22 *Arranging for someone to make decisions on your behalf* and Factsheet 62 *Deprivation of Liberty Safeguards*.

Best interest decisions: professionals should consult with others who have an interest in the person's welfare

The MCA 2005 Code of Practice states that “if it is practical and appropriate to do so [staff must] consult other people for their views about the person's best interests and to see if they have any information about the person's wishes and feelings, beliefs and values”. In particular, they should consult:

- “anyone previously named by the person as someone to be consulted on either the decision in question or on similar issues”;
- “anyone engaged in caring for the person”;
- “close relatives, friends or others who take an interest in the person's welfare”; or
- “any attorney appointed under a Lasting Power of Attorney [or a] deputy appointed by the Court of Protection”⁵².

8.7 Accessing information on the assessment and care plan if you help to care for someone else

Potentially there can be difficulties if you are caring for someone and need to see their care assessment and/or care and support plan.

As stated above, the person with care needs should receive a copy of their care plan without the need for a formal request (they can also ask to see other information, such as correspondence or reports that have been used as part of the assessment). As such, there would be nothing to stop the person you care for *choosing* to share the information with you.

Furthermore, if the care plan hinges on you providing care for someone, then you should ask the local authority to share the information with you.

⁵² Mental Capacity Act 2005 Code of Practice, Department for Constitutional Affairs, 2007 (the Department for Constitutional Affairs is now part of the Ministry of Justice)

However, what may create more of an issue is if the person you care for lacks the capacity to consent to share information. As indicated in the section above, the local authority would then need to make a ‘best interests’ decision in line with the *Mental Capacity Act 2005*. Unless there was specific evidence to the contrary – for example, a safeguarding concern – then it would be hard to see how the authority could conclude that it wouldn’t be in the person’s interest for a family member or friend who helps to care for them (or otherwise has a close interest in their wellbeing) to have access to the care and support plan and other related documents – also see the information at the end of the previous section, 8.6.

If there was a dispute between a carer/family member and social services in regard to what constitutes the service user’s best interests, then the complaints procedure could be used – see section 15 below.

9 Reviews of assessments / re-assessments of care needs

Local authorities “**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 should be set out in the original care plan⁵³.

Note: As with the original assessment, the review arrangements must fully enable the individual to actively participate in the process and, where appropriate, an advocate, their carer, or other family members.

Frequency

The local authority’s review of a person’s care needs and support plan should take place **within 12 months** of services being put in place; however, the guidance recognises that sometimes on-going reviews will need to be more frequent:

⁵³ Social Services and Well-being (Wales) Act 2014: Part 4 Code of Practice (Meeting Needs), Welsh Government

Authorities “**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’s] needs”. In these circumstances they must then “undertake a review irrespective of the [original] agreed review date”⁵⁴.

A review can also be requested at any time by the service user themselves (or their advocate, carer or family member on their behalf).

9.1 **The effects of the review on the services provided: increase, continuation, reduction or withdrawal of assistance**

The care and support plan must be revised if there has been a change in the person’s circumstances and presenting needs indicate an increase in services may be required.

It is possible that services may carry on as before, if there has not been much of change to someone’s care needs and the services will continue to help someone to achieve their personal outcomes.

However, it is also possible that your care or support services could be reduced, or withdrawn completely, should it be judged that your needs have changed and are now not as substantial as they were.

The Welsh Government’s guidance instructs local authorities that “where it is planned that services will no longer be provided the review **must** include a closure statement covering reasons for [the withdrawal of services, together with] an evaluation of the extent to which the [person’s personal] outcomes were achieved; and confirmation that the individual...has appropriate information, advice or assistance and / or access to community based preventative services to meet their needs” going forward⁵⁵.

If you disagree with any change to the services you are being provided following a review, you do have the right to challenge this and, if necessary, make a formal complaint. You can argue that the services you receive should continue whilst the complaints process is being pursued – see section 15 below.

⁵⁴ Ibid

⁵⁵ Ibid

10 How and where will the care services be provided?

Packages of care will need to be individually tailored to the service user's needs. The support and care can technically be anything that is reasonably needed to meet assessed social care needs, though in the main services are likely to fit under the umbrella of one of the following types of care:

- **Receiving support provided or arranged by social services within your own home and/or other types of non-residential social care services.**
- **Moving to live in a care home.**

Note: If you are a **carer**, the services must be something that will support you in your caring role and help you to sustain this, alongside other work and life pressures.

10.1 Care or support services in your own home / other non-residential services

Many older people receive care or support services within their own home (or day services provided elsewhere, but whilst the person continues to live at home). This could include the following, though this is not an exhaustive list:

- Care assistants to help with personal care (getting up, dressing, washing etc); other aspects of looking after yourself and your home; or to remind someone to do things like taking medication.
- Provision of aids (disability equipment), home adaptations or telecare equipment to make it easier for someone to go on living independently at home.
- Provision of meals at home (meals on wheels), or elsewhere.
- Help for people to get out and about – for example to visit a day centre for leisure and other activities. This could include the provision of, or assistance with, transport to and from the facilities.

Further information on care services at home can be found in Age Cymru's Factsheet 6w *Finding help at home in Wales*.

Length of care worker visits

The Welsh Government's guidance makes reference to an issue that has received media coverage in recent years; namely, care worker's having overly short time windows when visiting people in their own homes to provide care services. The guidance says that:

"Where [a] 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**" and this must then be stuck to by the authority, or by the care provider that the authority commissions to provide the service on their behalf (emphasis added)⁵⁶.

10.2 Receiving care in a care home

You may need, or wish, to move to live in a care home (either on a temporary or permanent basis). Care homes divide into broadly two types – residential and nursing. Your social worker will help you identify which sort is appropriate for your needs.

Residential care homes provide only social care staff; they do not provide any nursing staff and so medical care should be provided by NHS staff coming to the home when necessary. **Nursing homes** are for people who have specific nursing needs and they employ a mixture of social care and nursing staff. Further information on care homes can be found in Age Cymru's Factsheet 29w *Finding care home accommodation in Wales* and 10w *Paying for a permanent care home placement in Wales*.

Note: Sometimes people may not wish to move into a care home, even though they have substantial care needs. Further information in relation to this issue can be found in section 10.6 below.

⁵⁶ Ibid

10.3 Direct payments – an alternative way to arrange services to meet your eligible care needs

Direct payments and non-residential social care services

The standard procedure for non-residential social care is for the local authority to provide the services it has assessed you as needing directly – be this via their own staff employed by the authority, or by contracting a private care agency to operate the service/s on their behalf. Either way, the services are provided for you and you don't have to organise anything yourself. However, some people prefer to have more choice and control over the services they receive in order to meet their eligible care needs. Direct payments offer this facility – they are cash payments that local authorities can make to individuals so that they can organise their own social care services (either by employing a carer worker themselves, or by using a local home care agency).

Direct payments **must** be offered as an option by the local authority to anyone with eligible needs (including carers). They must then be made available in all cases where someone advises that they wish to choose this option. Authorities are advised that they can *only* refuse direct payments “where it is clear after extensive exploration” that they would not secure the personal outcomes required in the person's care and support plan⁵⁷. Age Cymru's Factsheet 24w *Direct payments for community care services in Wales* has further information on this topic.

Direct payments and residential care

Prior to 6 April 2016, direct payments could **not** be used to arrange long-term residential care. However, since the full implementation of the *Social Services and Well-being (Wales) Act*, they can now be used for this type of care as well. This is confirmed in the Welsh Government's guidance accompanying the Act:

“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**”⁵⁸ (emphasis added).

⁵⁷ Ibid

⁵⁸ Ibid

However, it is worth noting that there has already been an established policy for some years that people are given a choice of accommodation options when going to live in a care home. The *Social Services and Well-being (Wales) Act* continues this principle and authorities must ensure that where a person's needs are going to be best met in a care home “that the person has a genuine choice” of which one to move into. Therefore, given the choice that exists in this area already, it remains to be seen what role the inclusion of direct payments as an option is having.

10.4 Reablement

Following a social care needs assessment, some people may be allocated reablement services. These services aim to encourage and support people to learn or re-learn skills necessary for daily living, following a period of illness or after a stay in hospital. Reablement services are most frequently delivered in someone's own home. “Reablement can be a key element [in] preventative services”⁵⁹ (these being a significant focus of the *Social Services and Well-being (Wales) Act*, as outlined elsewhere in this factsheet).

Note: Local authorities cannot charge for the first six weeks of reablement services⁶⁰. Additionally, they “should have regard as to whether to extend this period in individual cases where a person's needs [are] such that their outcomes would benefit from a longer period of free reablement support”⁶¹. Further information on reablement can be found in Age Cymru's Factsheet 76w *Intermediate care and reablement in Wales*.

10.5 Sheltered housing

Sometimes a social care assessment will identify sheltered housing as a potential way to help people meet their needs.

⁵⁹ Social Services and Well-being (Wales) Act 2014: Part 2 Code of Practice (General Functions), Welsh Government

⁶⁰ Ibid

⁶¹ Social Services and Well-being (Wales) Act 2014 – Part 4 and 5 Code of Practice (Charging and Financial Assessment), Welsh Government (version 3 – April 2018)

This could include 'extra care' sheltered housing. This is a type of 'housing-with-care' – housing in which personal care services, such as help with bathing and dressing, are provided.

The local authority social services department would need to liaise with their counterparts in the housing department in regard to the possible allocation of sheltered housing. Age UK's Factsheet 64 *Specialist housing for older people* contains further information.

10.6 **Where a large amount of care is needed – negotiating over care if you would like to stay in your own home**

If a large amount of care is required to enable someone to remain living in their own home or in sheltered housing, it might be cheaper and/or be a more practical way to adequately meet someone's care needs for them to move into a care home.

This can lead to difficult situations – for example, where someone feels very strongly that they do not want to live in a care home environment and want to remain at home.

People cannot be *made* to move into a care home against their will, as long as they are still mentally capable of making the decision for themselves (further information on mental capacity can be found in section 8.6). Nevertheless you may be advised, following an assessment at home or an assessment in hospital, that a care home is the only safe and effective way of meeting your care needs.

If you do not want to move into a care home, you are of course entitled to say so, and can ask your social worker to explore again whether there are some specific services – or combinations of services – that could adequately and safely meet your needs in your own home (to an equivalent level as in a care home). Alternatively, sometimes it might be possible to agree an arrangement with the local authority where homecare is provided that doesn't fully meet your needs, *but you then make separate arrangements to run alongside this*.

Some local authorities set a limit on how much care they will provide or arrange to support someone in their own home (or in sheltered housing) before suggesting that the person move to a care home. It should be noted that any such limit **must be applied flexibly**.

The scope of the local authority's duty to meet eligible needs

As discussed earlier in this factsheet, legally, the local authority is **under a duty to meet your assessed eligible needs**; *however*, it is able to do so in the most cost-effective way.

Whilst this means the authority cannot choose a care package for you for the *sole* reason that it is cheaper than the alternatives – for example, you shouldn't be asked to move to a care home just because it is cheaper than the home care you would need (or vice versa) – if there were *two* options that would meet your needs **equally well**, the local authority can legitimately choose the option that is cheapest for it to provide or arrange.

However, having said this, the local authority would have to ensure that the cheaper option met *all* assessed and agreed needs.

As an example, it wouldn't be sufficient if the cheaper provision would meet your personal care needs (say, help with washing and eating), but was going to leave other personal outcomes unmet that were identified during the assessment (such as the service user being able to maintain family or other significant personal relationships; or involvement in the community – the care option/s that the local authority chooses **must** meet these sorts of needs too).

This is confirmed in the Welsh Government's guidance – namely, that people's personal outcomes must be identified during assessment and, although these will differ in each case, they must relate to the wellbeing definitions in the *Social Services and Well-being (Wales) Act*. The wellbeing definitions in the guidance include statements about the maintenance of important relationships, as do the personal outcomes to which eligible care and support needs must relate (i.e. relationships and involvement in the community are mentioned *alongside* other 'practical' needs such as ability to carry out self-care and/or domestic tasks). As mentioned in section 7.1 above, all the wellbeing factors are of **equal importance** in the guidance.

It is also worth mentioning here, in the context of a local authority *choosing* care and service options, that this choice must be made in conjunction with the service user – i.e. as indicated in the Welsh Government's guidance and covered above in section 6.2 about the '**person-centred**' assessment process.

In other words, if you felt that the authority had not adequately involved you in the decision process regarding your care and support and/or had not considered all the wellbeing and personal outcome factors, you could ask them to reconsider a decision, or make a complaint, outlining these points to them. See section 15 below for further information on making a complaint. You might find **advocacy** support helpful if you wish to pursue a complaint with the local authority – further information can be found in section 6.3.

Negotiating an arrangement with a local authority that allows someone to remain living at home

As touched upon above, in some circumstances it may be possible for you to negotiate with your local authority about the care it will provide or arrange. If you would prefer to remain living at home, but your care needs could be met more cheaply by moving to a care home – and the local authority is able to show that *all* assessed and agreed needs can be met this way – you could explore the possibility of making an arrangement, whereby you receive a maximum homecare package from the authority and/or receive only the services which are deemed to be the most essential. You would then need to make your own additional care provision for the remaining needs.

The authority may well be concerned that by doing this you may be at risk of not getting all the help you need; therefore, they might ask you to sign something to say that you understand that the care it will provide or arrange will not meet all your agreed needs and/or that you are rejecting the offer of a place in a care home which would meet all these needs.

The authority will want to make sure you understand the possible risks involved. If you have a carer who is willing and able to help you with some things, they may be able to fill in the gaps in provision. However, having said this, it is very important that carers don't feel pressured to do more than they can manage and/or have an unrealistic view of how much they can do – the authority will want to examine issues like this as well.

These sorts of compromises and negotiations may be far from ideal, but some older people have found this approach has helped them to remain living at home. As noted above, you may find an advocacy service useful – see section 6.3.

11 Paying for services at home and in a care home – financial means testing

When a local authority provides or arranges services for you, in most circumstances you will be asked to contribute towards the cost of that care, be this for care in your own home, or in a care home.

There may be some exceptions in certain situations, or for particular elements of care, where the services will be non-means tested and free of charge – for example, reablement (see section 10.4 above); ‘after-care’ services provided under Section 117 of the *Mental Health Act 1983*; NHS continuing healthcare (often provided in a nursing home, though can be in someone’s own home too); or weekly NHS contributions towards fees in a nursing home.

Further information on these and other exceptions can be found in the following Age Cymru factsheets: 46w *Paying for care and support at home in Wales*; 10w *Paying for a permanent care home placement in Wales*; 76w *Intermediate care and reablement in Wales* and 20w *NHS continuing healthcare and NHS-funded nursing care in Wales*.

11.1 Welsh Government guidance on financial means testing and paying for care

Since 6 April 2016 there has been a single financial assessment and charging framework that covers *both* non-residential and residential care.

However, there are differences in the rules for each type of care – as outlined in sections 11.2 and 11.3 below – albeit, they are contained within the following single guidance document:

Social Services and Well-being (Wales) Act 2014: Part 4 and 5 Code of Practice (Charging and Financial Assessment) (version 3 – April 2018)

See section 1.3 above for a link to the Social Care Wales website where the Part 4 and 5 guidance can be accessed.

Note: As this factsheet primarily concerns the social care needs assessment process, rather than the charging rules for services subsequently provided, sections 11.2 and 11.3 below give only brief information on the charging rules.

The main Age Cymru factsheets for detailed information on paying for care and means testing rules are Factsheet 46w *Paying for care and support at home in Wales* and Factsheet 10w *Paying for a permanent care home placement in Wales* (there are also a number of accompanying factsheets for 10w that look in more detail at particular elements of care home funding – for example 38w, which specifically focuses on the treatment of property in the means test. See section 1 above for a full list).

11.2 Rules on charging for care in your own home (or other non-residential care services)

In brief, the following applies:

Minimum income after paying for your services

The charging guidance advises that “because a person who receives care and support outside a care home will need to pay their daily living costs such as rent, food and utilities, the charging framework seeks to ensure they have enough money to meet these costs. As a result after charging local authorities **must** leave a person who is being charged with a minimum income amount”⁶².

After paying the required charge, your income should not be reduced below the **total** amount of the following:

- Someone’s “basic entitlement” (this is either the level of Pension Credit Guarantee Credit that someone receives, or if not getting this benefit, an equivalent amount worked out by the local authority based on the person’s age, level of disability and personal circumstances); **plus**
- a ‘buffer’ of at least **35%** of the above basic entitlement; **plus**
- a further allowance of at least **10%** of the basic entitlement in recognition of ‘disability related expenditure’ which service users are likely to have.

⁶² Ibid

A maximum weekly charge

In Wales, there is a maximum weekly charge for homecare and other non-residential social care services. This had been in operation for a number of years already and was retained as part of the *Social Services and Well-being (Wales) Act 2014*.

The current maximum charge from 9 April 2018 is £80 per week⁶³.

Authorities are not able to charge a service user more than this amount a week, regardless of which services, or combination of services, they are receiving⁶⁴.

Note: The £80 maximum charge cannot be imposed routinely for all services – the cost to the authority of providing or arranging those services would genuinely have to be of that level. For example, if the authority was putting in place services that cost £50 per week to provide, then the maximum charge which could be levied for these would be £50.

The person's means test would then determine whether they would pay this full amount, or something less. Also, note that the rules in regard to being left with a minimum income after paying your charge are likely to mean that people on modest, or low, incomes will only need to pay a relatively small charge, or potentially nothing at all. See Factsheet 46w *Paying for care and support at home in Wales* for further information.

The capital limit

In regard to non-residential / homecare services, the local authority must apply a capital limit of **£24,000⁶⁵**.

The capital taken into account for non-residential care will *exclude* the value of the property which you live in as your “**main or only home**”⁶⁶ (any other property which you own will be taken into account, however).

⁶³ It is possible it will be revised again in April 2019.

⁶⁴ It should be noted that there are some 'low level, low cost' services, where local authorities are able to set flat rate charges for the services. This means that they do not count towards the £80 maximum weekly charge.

⁶⁵ It should be noted that this differs from the capital limit level used for people in care homes (see section 11.3 below). It is possible that the capital limit for non-residential services may be revised for next April (2019).

Any savings or other capital which you have that is below £24,000 **must** be disregarded by the authority when they carry out the financial means test:

“Any capital a person holds at or below the capital limit cannot be used to pay for their assessed care and support, and should be retained by the person to use as they wish”⁶⁷.

If you have assets over the capital limit, then the local authority can charge the maximum amount for the services (as indicated above this could be the £80 maximum weekly charge, or a figure below this if it costs the authority less than £80 to arrange the services).

Note: The local authority should arrange your non-residential care services irrespective of your financial resources or capacity to do this yourself.

If you can afford to and would prefer to make your own private arrangements to meet your care needs, then you can, of course, pursue this option instead.

Carers

Local authorities must apply the same rules, as outlined above, when charging carers for support services. However, the guidance does note that authorities may wish to *exclude* carers from charges:

“When deciding whether to charge, and in determining what an appropriate charge is, a local authority **must** consider how it wishes to express the way it values carers within its local community as partners in care, and recognise the significant contribution [they] make”.

It recognises that “carers help to maintain the health and well-being of the person for whom they care, support this person’s independence and enable them to stay in their own homes for longer. In many cases, carers voluntarily meet eligible needs that the local authority would otherwise be required to meet. Local authorities **must** consider carefully the likely impact of any charges on adult carers, particularly in terms **of their willingness and ability to continue their caring responsibilities**” (emphasis added).

⁶⁶ Social Services and Well-being (Wales) Act 2014 – Part 4 and 5 Code of Practice (Charging and Financial Assessment), Welsh Government (version 3 – April 2018)

⁶⁷ Ibid

“Ultimately, a local authority **must** ensure that any charges do not negatively impact on a carer’s ability to look after their own health and well-being and to care effectively and safely for the cared for person”⁶⁸.

11.3 Rules on charging for care in a care home

In brief, the following applies:

The capital limit

As of 9 April 2018, the current capital limit in relation to care home charging is £40,000⁶⁹.

When someone is in a care home, the value of a property that they own (and used to live in immediately prior to entering the care home) may well be taken into account and mean they are assessed as having assets over the capital limit.

Sometimes the property can be disregarded though – for example, if it continues to be occupied by the person’s partner, or another relative aged 60 or over (or if your stay in the care home is only on a temporary basis).

Any *other* property that the person owned would be taken into account too (e.g. a house that they are renting out).

If someone has capital **below** the £40,000 limit, then they will be eligible for local authority assistance towards their care costs, though will still have to make a contribution to the overall fees from their day to day income and will generally only be left with a small amount of weekly income to use as they wish – see below.

If someone has resources **over** the capital limit – be it from a property, or a large amount of money in a savings account, for example – they will be a ‘self funder’ and will need to pay all of their care home fees themselves (though depending on circumstances they may also receive a weekly contribution towards this from the NHS – see below).

Assistance towards the care home costs from the local authority will become available should someone’s financial resources fall to the capital limit level.

⁶⁸ Ibid

⁶⁹ This may increase again in April 2019.

The 'minimum income amount' (MIA)

The Welsh Government's charging guidance states that:

"People in a care home with capital at or below the capital limit will contribute most of their income, excluding their earnings, towards the cost of their care". However, a local authority "**must** leave the person with a specified amount of their own income so that [they have] money to spend on personal items such as clothes and other items that are not part of their care and support. This is known as the minimum income amount (MIA)"⁷⁰.

As of 9 April 2018 the MIA is £28.50 per week⁷¹.

In some cases authorities can apply a higher MIA. Examples given in the guidance include when a person wishes to pay "half their occupational or personal pension...to a spouse" living at home, or where a person's property has been disregarded and, as a result, the authority needs to consider "whether the MIA is sufficient to enable the person to meet...resultant costs [such as] fixed payments (like mortgages, rent and council tax), building insurance, utility costs [or] reasonable property maintenance costs"⁷².

NHS assistance

For people who live in nursing homes, the NHS is responsible for meeting the cost of any care that someone requires from a registered nurse. There is a standard weekly amount, known as the **NHS funded nursing care contribution**.

At the time of writing – April 2018 – the NHS funded nursing care contribution is currently **£149.67 per week** towards the care home fees. The figure is the same for the whole of Wales (the figure may be subject to further review and it is possible that it may be changed again prior to the next update of this factsheet in April 2019).

⁷⁰ Social Services and Well-being (Wales) Act 2014 – Part 4 and 5 Code of Practice (Charging and Financial Assessment), Welsh Government (version 3 – April 2018)

⁷¹ The figure may change again in April 2019

⁷² Social Services and Well-being (Wales) Act 2014 – Part 4 and 5 Code of Practice (Charging and Financial Assessment), Welsh Government (version 3 – April 2018)

Note: In certain circumstances, the NHS is responsible for meeting the *full* cost of someone’s care in a care home. This is called **NHS continuing healthcare (CHC)** or ‘fully funded care’. To be eligible a resident must have complex, intense or unpredictable health needs in a number of areas which may – in combination or alone – demonstrate a ‘primary health need’ because of the quality and/or quantity of care required to meet the individual’s needs. As such, because it is judged that the primary reason for someone needing care is health-based (rather than social care needs based), they are entitled to healthcare – which is free – rather than social care (which is means tested). Age Cymru’s Factsheet 20w *NHS continuing healthcare and NHS-funded nursing care in Wales* has further information on this topic.

The right of self-funders to ask the local authority to arrange their care

Prior to 6 April 2016, the local authority *only* had a responsibility to arrange a care home placement for someone who was in a position to fully self fund (i.e. assets over the capital limit) if they lacked the capacity to do so themselves. However, the *Social Services and Well-being (Wales) Act* now:

“Enables a person who can afford to pay, in full, for their own care and support in a care home to ask the local authority to arrange this on their behalf”⁷³ (emphasis added). “The rate at which the local authority commissions the placement is a matter for local authority determination”⁷⁴.

Note: If you are fully self funding and choose to arrange your care home placement independently, Age Cymru’s Factsheet 29w *Finding care home accommodation in Wales* may be helpful as it has a section on issues to consider and questions to ask when choosing a home.

⁷³ Ibid

⁷⁴ Social Services and Well-being (Wales) Act 2014: Part 4 Code of Practice (Meeting Needs), Welsh Government

12 Moving from one local authority area to another: continuity of care and support

Moving from one area to another for people with care and support needs can potentially be problematic because of uncertainty surrounding their future care package. The *Social Services and Well-being (Wales) Act* has sought to address this issue in regard to moves *within* Wales. It should be noted that the onus is on the individual receiving services to inform their local authority that they intend to move; however, once they have done so:

- The **current authority** “must notify the authority to which the person intends to move ...and must ensure that the information contained within the assessment and the care and support plan is made immediately available to the new authority”.
- The **new authority** must carry out a new assessment “having regard in particular to any change in the person’s needs for care and support arising from the move”. However, “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 [original] authority until a new assessment is undertaken”⁷⁵.

Moving elsewhere in the UK

An annex to the Welsh Government’s guidance advises that there are ‘good practice principles’ in regard to the continuity of care when someone moves from one country to another within the United Kingdom (the responsible local authorities in each country “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”)⁷⁶.

⁷⁵ Social Services and Well-being (Wales) Act 2014: Part 4 Code of Practice (Meeting Needs), Welsh Government

⁷⁶ Ibid

13 What happens if someone refuses help?

13.1 Refusal of the offer of a care needs assessment

The guidance to support the *Social Services and Well-being (Wales) Act* advises that if someone who appears to have care needs decides to decline the offer of a social care assessment, they are free to do so and the authority will have no power to pursue the assessment **against that person's will**, except in two specific scenarios. These are:

- “Where the adult lacks capacity to make the decision to refuse the assessment and an assessment would be in his or her best interests” (see section 8.6 above in relation to the Mental Capacity Act).
- “Where the adult is experiencing...abuse or neglect” (or is at risk of experiencing it)⁷⁷.

Note: In regard to the second point above, if the person experiencing abuse has mental capacity, but “**chooses** to endure the abuse and refuses to participate in an assessment”, the authority must assess the situation using information received from partner agencies⁷⁸ (emphasis added).

13.2 Refusal to accept a care and support plan

Where the person has mental capacity

Following an assessment, the authority may determine that someone has a right to care and support, but the person refuses to accept it. The guidance advises that:

“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”.

⁷⁷ Social Services and Well-being (Wales) Act 2014: Part 3 Code of Practice (assessing the needs of individuals), Welsh Government

⁷⁸ Ibid

Where the person lacks sufficient mental capacity to make a decision to reject the offered services

The local authority would need to “meet its duties under the Mental Capacity Act 2005 and associated code of practice”⁷⁹. **This could mean that services of some kind might be put in place in order, for example, to prevent the person being a danger to themselves. Any action of this kind would also need to comply with the Deprivation of Liberty Safeguards (DoLS) – see section 8.6 above.**

13.3 The Mental Health Act 1983

Mental health legislation might be relevant in some instances where people wish to refuse offers of assistance from social services.

Certain provisions under *Part II* of the *Mental Health Act 1983* can be used to require someone to stay for a period of time in a psychiatric hospital or unit or other institution (often referred to as being ‘sectioned’ or detained).

Also, *Section 7* of the same Act allows for guardianship orders to be made to require people to live at a specified place, to attend for treatment and/or to allow access to healthcare professionals. These powers can only be used if the person has a sufficiently serious ‘mental disorder’ and it is necessary in the interests of their welfare. A strict procedure is followed.

Note: The term ‘mental disorder’ is defined within the 1983 Act and is **different** to the definition of mental capacity with the *Mental Capacity Act 2005*. The charity MIND provides a useful guide to the *Mental Health Act 1983* at:

www.mind.org.uk/information-support/legal-rights/mental-health-act-1983

⁷⁹ Social Services and Well-being (Wales) Act 2014: Part 4 Code of Practice (Meeting Needs), Welsh Government

14 ‘Ordinary residence’ and confusion over which local authority has responsibility for service provision

Generally, the local authority responsible for carrying out your assessment and – if you are eligible – arranging your care plan and service provision, is the local authority in which you are ‘ordinarily resident’. In most cases this will be clear cut – i.e. the local authority area where the person’s home is located. However, sometimes there may be confusion on this matter if, for example, someone spends quite a lot of time living in different areas; is of no fixed abode; or has recently returned from abroad.

There is no specific definition of ‘ordinary residence’ in the *Social Services and Well-being (Wales) Act 2014*; however, local authorities are advised that they should “always consider each case on its own merits...and have regard to [the court case, *Shah v. London Borough of Barnet* (1983)] when determining...ordinary residence”.

In this case, Lord Scarman stated that:

Ordinarily resident “refers to a man’s abode in a particular place or country which he has adopted voluntarily and for settled purposes as part of the regular order of his life for the time being, whether of short or long duration”⁸⁰.

In other words, it is about where you choose to be, even if you haven’t been there for very long. “Factors such as time, intention and continuity (each of which may be given different weight according to the context) have to be taken into account”⁸¹. The Welsh Government’s guidance makes clear that in cases where ordinary residence is not certain:

“The local authority should meet the individual’s needs first” – that is, the authority “in which the person is living or is physically present” – “and then resolve the question of residence subsequently. This is particularly the case where there may be a dispute between two or more local authorities”⁸².

⁸⁰ Social Services and Well-being (Wales) Act 2014: Part 11 Code of Practice (Miscellaneous and General), Welsh Government

⁸¹ Ibid

⁸² Ibid

15 Problems and complaints regarding social care assessments or services

It is possible that after the care assessment your local authority will decide that your needs do not meet its criteria. Alternatively, you may be offered assistance that you feel is inadequate or inappropriate.

Note: As indicated elsewhere in the factsheet, the local authority should put its decision – and the reasons for it – in writing and make a copy available to you. If you are not offered this, you can contact them and request they send it to you. If the authority has determined that help cannot be offered, the reason for this should be recorded in the written copy of the assessment. You could use this to assist you, should you decide to make a complaint – for example, you could point out, with reference to your assessment document and/or care plan, where you believe needs have been missed, underestimated, or there are gaps in help provided.

15.1 Services provided by or arranged by the local authority

The Welsh Government has published the following complaints guidance:

A guide to handling complaints and representations by local authority social services (August 2014).

A copy can be accessed at:

www.wales.gov.uk/topics/health/socialcare/complaints

The complaints procedure has two stages:

- **Stage One** will involve an attempt at ‘*Local Resolution*’ with the same local authority that made the original decision.
- **Stage Two** would be a ‘*Formal Investigation*’. The complaints guidance advises that the Formal Investigation stage “may commence if the seriousness of the complaint means that it is inappropriate to deal with [it] at Local Resolution Stage, or the complainant remains dissatisfied at the end of the Local Resolution Stage”. At the formal stage, an ‘Independent Investigator’ **must** be appointed – this is “a person who is neither a member nor officer of the local authority to which complaints have been made, or the spouse or civil partner of such a person”. They may be an employee of a different authority or an “independent expert in the matter being investigated”.

Note: Continuation of services during a dispute

If you have already been receiving a service/s from your local authority, but they are proposing a change in regard to your care plan, placement, or services “the authority may need to **defer or freeze the decision** until the complaint is resolved” (emphasis added). Local authorities “should always consider deferring a decision that will have a significant effect on the life of a service user until the complaint...has been resolved, taking into account the welfare and safety of the person concerned. The decision to defer should follow a careful assessment of the needs of the individual, including the different risks that might flow from deferring or not deferring”⁸³.

The Public Services Ombudsman for Wales

If you have used the two stage local authority complaints procedure, but remain unsatisfied with the outcome and/or handling of your complaint, you can escalate your case to the Ombudsman.

You should give the authority a reasonable opportunity to investigate and respond to your complaint before approaching the Ombudsman, though this doesn't necessarily mean that you have to have exhausted the authority's complaints procedure⁸⁴. The Ombudsman is impartial and independent from government bodies – see section 16 for contact details.

Note: There may also be some other options open to you in regard to your complaint, including contacting the relevant regulatory body – see section 15.3 below.

15.2 Complaints if you are fully self funding your care services

If you are paying the maximum charge for **homecare**, but the local authority is providing or has arranged the services, you can make use of the local authority complaints procedure, as outlined above.

⁸³ A guide to handling complaints and representations by local authority social services, Welsh Government, August 2014

⁸⁴ For example, if the case seemed particularly serious, or the authority was not carrying out an investigation in compliance with the two stage process outlined above, you might consider approaching the Ombudsman sooner.

If you have arranged homecare services entirely **privately**, however, you would need to make a complaint to the private care agency, or other organisation, providing your services.

Again, if you are fully self funding your **care home placement**, you would need to direct your complaint to that care provider and wouldn't usually have access to the local authority procedure, though exceptions to this would be:

- where a self funder happens to have arranged their care in a home that is owned by the local authority; or
- where the local authority has arranged the placement for the self-funder: however, in this scenario you may only be able to complain in regard to how the local authority exercised this initial function of choosing and organising a suitable care home (rather than in regard to complaints about the care received in the care home following this).

Self funders and the Ombudsman service

Since November 2014, people who fully self fund their care have had the right to escalate a complaint about those services to the Public Services Ombudsman for Wales. As with cases involving the local authority, the Ombudsman will usually expect someone to have tried pursuing their complaint using the complaints procedure of the organisation concerned first.

15.3 Regulatory bodies (these organisations can be contacted whether receiving local authority assistance or a self funder)

The Care Inspectorate Wales (CIW)

The CIW is the body responsible for inspecting, regulating and maintaining standards in social care services in Wales. If you are not satisfied with any aspect of the service you receive from a body registered with the CIW, such as a home care agency or care home provider, you can inform the CIW to make them aware of your concerns. They must then decide the level and type of response to take. CIW have a range of powers to investigate and enforce changes on the service provider and then to carry out subsequent reviews.

This could include, for example, making a report about poor standards of care in a care home. You may contact only the CIW in relation to your concerns, or do so in conjunction with informal discussions with the managers of the service provider, or while making a formal complaint to the local authority if they are also involved with the provision of the service.

The CIW does not have a duty to respond to you individually in the same way as a local authority complaint. What they will do, however, is record your concerns which may then be used to inform their work of maintaining overall standards. Potentially, your evidence may be used – in addition to that from other sources and CIW’s inspections – to decide whether or not a social care service is meeting minimum standards and, if not, whether CIW will need to use its powers to compel a local authority (or other service provider) to improve their service.

The CIW will have to act urgently in certain situations – for example, where the information it receives leads it to believe that there is a significant risk to individuals (i.e. a safeguarding concern) or where criminal activity has taken place.

Note: The CIW website has information on the standards to expect of services, individual service providers and how to make complaints – see section 16 below for contact details.

Healthcare Inspectorate Wales (HIW)

The HIW is the independent inspector and regulator of NHS healthcare and independent healthcare organisations in Wales. HIW, rather than CIW, will be responsible for regulating NHS services that you may receive in your own home, or in a care home, alongside your social care services from the local authority (or services you are self funding). See section 16 for their contact details.

15.4 Other organisations who may be of assistance

Older People’s Commissioner for Wales

You can contact the Older People’s Commissioner for Wales in regard to any concerns you have about a local authority’s assessment process, social care services provided by the local authority, or from another organisation.

The role of the Commissioner is to ensure that the interests of older people in Wales, aged 60 or over, are safeguarded and promoted – contact details can be found in section 16 below.

Local councillors or Assembly Members (AMs)

You might wish to contact your local councillors, to see if they will support you in pursuing your case. You could also contact your Assembly Members (AMs) if you feel that they should know that the system is not working for you. Contact details can be obtained from the National Assembly for Wales website at:

www.assemblywales.org/memhome.htm

Charitable organisations/support groups

Relevant support groups or charities may also be able to assist with a concern you have about the local authority and social care services. There may be a local Age Cymru in your area who can advise – see section 16 for contact details.

15.5 Human rights and equalities

The age element of the *Equality Act 2010* became legally enforceable in health and social care on 1 October 2012. Under the Act, it is unlawful to discriminate against someone in the provision of goods and services unless a practice is covered by an exception from the ban, or good reason can be shown for the differential treatment, known as ‘**objective justification**’.

There are **no** specific exceptions to the ban on age discrimination for health or social care services. This means that any age-based or related discriminatory practices by the NHS and social care organisations must now be able to be objectively justified to ensure their legality.

Other equality areas such as disability are also included within the Act. An advice service, called the *Equality Advisory and Support Service*, can be contacted for further information on these issues – see section 16 for contact details.

16 Useful organisations

Age Cymru organisations (local)

Your local Age Cymru may be able to provide advice and support on issues around care assessments and provision of services. They may also operate an advocacy service.

- Telephone Age Cymru Advice on **08000 223 444**;
- E-mail: **advice@agecymru.org.uk**; or
- visit the Age Cymru website: **www.agecymru.org.uk**

Care Inspectorate Wales (CIW)

CIW inspects and regulates care and social services in Wales.

Tel: 0300 7900 126

E-mail: ciw@gov.wales

Website: www.careinspectorate.wales

Carers UK

A national charity providing information, advice and practical and emotional support for carers.

Advice Line: 0808 808 7777

Carers Wales: 029 20 811370

Website: www.carerswales.org

Citizens Advice Bureaus (CABs)

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

Tel: 03444 77 20 20

Details of your nearest CAB can be found at: www.citizensadvice.org.uk

Equality Advisory and Support Service

A helpline that can advise people on equality and human rights issues.

Tel: 0808 800 0082

Website: www.equalityadvisoryservice.com

Healthcare Inspectorate Wales (HIW)

The HIW is the independent inspector and regulator of NHS healthcare and independent healthcare organisations in Wales.

Tel: 0300 062 8163

E-mail: hiw@gov.wales

Website: www.hiw.org.uk

Older People's Commissioner for Wales

Independent champion for older people across Wales.

Tel: 03442 640670

E-mail: ask@olderpeoplewales.com

Website: www.olderpeoplewales.com

Public Services Ombudsman for Wales

The Ombudsman looks to see whether people have been treated unfairly or have received a bad service from a public body, such as the NHS or local authority social services department.

Tel: 0300 790 0203

Website: www.ombudsman-wales.org.uk

Royal Voluntary Service (RVS)

RVS operate various services in Wales to help older people stay independent at home.

Tel: 0845 608 0122

Website: www.royalvoluntaryservice.org.uk

Welsh Government

The devolved government for Wales.

Tel: 0300 060 4400

E-mail: customerhelp@gov.wales

Website: www.wales.gov.uk

17 Further information about Age Cymru

Age Cymru is the leading charity for all older people in Wales. We campaign, we research and we fundraise to make sure we build a better life for all older people. We ensure older people's voices are heard, we challenge and change attitudes, we fight discrimination wherever we find it and we tackle elder abuse in all its forms. Together with our local Age Cymru partners we provide vital services in communities across Wales.

The Age UK family

Along with Age UK, Age Scotland and Age NI, Age Cymru is a member of the Age UK family.

Age UK (Age UK Advice: 0800 169 65 65; website: www.ageuk.org.uk)

Age NI (Age NI Advice: 0808 808 7575; website: www.ageni.org)

Age Scotland (Tel: 0845 833 0200; website: www.agescotland.org.uk)

Our information materials

Age Cymru and Age UK publish a large number of free Information Guides and Factsheets on a range of subjects, including money and benefits, health, social care and housing. Some resources, such as this factsheet, are produced 'in-house' by Age Cymru, whilst others are branded Age UK and – depending on the subject matter – contain either information which is applicable in England and Wales, or for the whole of the UK.

Contact details

Age Cymru Advice

Tel: 08000 223 444

E-mail: advice@agecymru.org.uk

Website: www.agecymru.org.uk





www.facebook.com/agecymru



www.twitter.com/agecymru



www.youtube.com/agecymru

Contact us if you would like:

- To order copies of any factsheets or information guides.
- Further advice if you cannot find the information you need in this factsheet.
- Details of your nearest local Age Cymru organisation.

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Creu Cymru oed gyfeillgar
Creating an age friendly Wales

Can you help Age Cymru?

Please complete this donation form with a gift of whatever you can afford and return to: Age Cymru, FREEPOST RLTL-KJTR-BYTT, 13/14 Neptune Court, Vanguard Way, Cardiff CF24 5PJ. Alternatively, you can phone 029 2043 1555 Monday to Friday 9am – 5pm or visit www.agecymru.org.uk/donate. Thank you.

Personal details

Title:	Initials:	Surname:
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Address:
Postcode:

Tel:	Email:
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By providing your email address and/or mobile number you are agreeing to us contacting you in these ways. You may contact us at any time to unsubscribe from our communications.

Your gift

I would like to make a gift of: £

I enclose a cheque/postal order made payable to Age Cymru

Card payment

I wish to pay by (please tick) MasterCard Visa CAF CharityCard

Maestro American Express

(Maestro only)

<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	Signature X
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Expiry date / Issue no. (Maestro only)

Gift aid declaration

(please tick) Yes, I want Age Cymru to treat all donations I have made for the four years prior to this year, and all donations I make from the date of this declaration until I notify you otherwise, as Gift Aid donations. I confirm I pay an amount of income tax/capital gains tax to cover the amount that all charities and Community Amateur Sports Clubs will reclaim on my donations in the tax year. Date: ___/___/___
I understand that other taxes such as VAT and Council Tax do not qualify.



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