



# Care and Support from a Local Authority for Adults

## When must a Local Authority assess needs?

When it appears to a Local Authority that an adult (aged 18+) may have needs for care and support.

## What is the eligibility criteria?

To qualify for care and support provided by a Local Authority, the adult must answer “yes” to all 3 questions:

- 1) Is the **need** for support because of a physical or mental impairment, or illness?
- 2) Is the adult unable to achieve two or more of the **care outcomes**?
- 3) Could this have a **significant impact** on the adult's **well-being**?

### 'Need'?

A Local Authority has a duty to meet eligible needs. This means the adult must show that the need for care and support is because of a physical or mental impairment, or illness, which has an impact on activities of daily living and well-being.

### 'Care Outcomes'?

There are 10 outcomes which must be considered and assessed:

- 1) Managing and maintaining nutrition
- 2) Maintaining personal hygiene
- 3) Managing toilet needs
- 4) Being appropriately clothed
- 5) Being able to make use of the home safely
- 6) Maintaining a habitable home environment
- 7) Developing and maintaining family or other personal relationships
- 8) Accessing and engaging in work, training or volunteering
- 9) Making use of necessary facilities or services in the local community including public transport, recreational facilities or services
- 10) Carrying out any caring responsibilities for a child.

An adult must be unable to achieve two or more of these outcomes.

### 'Significant Impact on Well-being'?

It must be demonstrated that the adult's inability to achieve two or more care outcomes has a significant impact on well-being.

'Well-being' includes:

- Personal dignity
- Physical, mental health and emotional well-being
- Protection from abuse and neglect
- Control by the individual over day to day life
- Participation in work, education, training or recreation
- Social and economic well-being
- Domestic, family and personal relationships
- Suitability of living accommodation
- The individual's contribution to society

Guidance emphasises that the individual is best placed to understand the impact of his or her situation on their well-being.

## The Assessment Process

The process in brief is as follows:

- 1) An adult with needs for care and support is brought to the attention of the Local Authority.
- 2) The Local Authority must convene a needs assessment to determine what the adult's needs are, and whether the adult is eligible for care and support.
  - A list of questions to be covered as part of the assessment process should be provided in an accessible format, in advance of the assessment.
  - The adult, any carer, or person interested in the adult's welfare should be involved in a way which promotes effective participation.
  - If the adult is likely to experience 'substantial difficulty' understanding, retaining, using, weighing or communicating information as part of the assessment process, independent advocacy should be provided.
  - Assessors must have the requisite skills, competence, knowledge and training to complete the process. Specialist expertise should be obtained where necessary.
  - The adult should be placed at the heart of the assessment process.
- 3) If the assessment identifies that an adult who is ordinarily resident in the Local Authority's area has eligible needs, steps should be taken to identify how those needs will be met through care and support planning.

## Financial Eligibility

Local Authority provision is means-tested. A financial assessment to determine eligibility for funded care has to be completed.

## What are the thresholds to be eligible for Local Authority funded care?

If an adult's savings and capital are more than £23,250, they will not be eligible for Local Authority funded care unless a capital disregard applies or eligibility for non-means tested (i.e. free) NHS Continuing Healthcare is established. A jointly funded care package or the NHS Funded Nursing Contribution may be available but will require a financial contribution.

If the adult's capital is between £14,250 and £23,250 the adult will be required to contribute £1 per week for every £250 of capital between these two figures. The adult will have to contribute all their income, minus £24.90 per week for the personal expenses allowance.

If the adult's capital is below £14,250 the adult will be entitled to maximum Local Authority support although the adult will still be required to contribute their income, minus £24.90 per week for the personal expenses allowance.

## What happens if an adult is a self-funder?

Even if an adult does not satisfy the means test, a self-funder has a right to have the Local Authority make the arrangements required to meet eligible care needs. Some Local Authorities provide brokerage services to enable self-funders to access better care at potentially lower cost.

## Care and Support Plans

Where the duty to meet eligible needs has been triggered, a written care and support plan should be prepared. This may be separate, or combined with the needs assessment document.

The care plan must specify:

- 1) All the needs identified in the assessment.
- 2) Which of the needs identified meet the eligibility criteria.
- 3) How the Local Authority is going to meet eligible needs.
- 4) A personal budget.

The impact of the eligible needs on the adult's well-being, and what the adult wants to achieve should be explained in the care plan.

Once the plan has been agreed, a written copy should be provided.

## What is a Personal Budget?

A statement of the money needed by a Local Authority to meet eligible needs.

A personal budget must be included in all care plans to enable an adult to exercise greater choice and control over how their care needs are met.

## How is a Personal Budget set?

An indicative personal budget figure is often included within the draft care plan before a final figure is agreed. A Resource Allocation System ("RAS") is frequently used to calculate the

personal budget figure by reference to pre-determined costs of meeting specific needs. Guidance makes it clear however that a personal budget must always be an amount of money sufficient to meet need. The calculation process should be transparent and robust.

## What is a Direct Payment?

Once a personal budget has been agreed, it may be possible to request a Local Authority provides a direct payment. This means the Local Authority transfers the money required to meet care needs to the adult, or a third party, to enable the adult to make arrangements to purchase care and support flexibly.

## When must a Local Authority make a Direct Payment?

If the following conditions are satisfied:

- 1) The person is eligible for care and support;
- 2) The adult requests a direct payment to meet some or all of his or her care needs;
- 3) The adult has capacity to make the request and receive payment, or has a nominee;
- 4) The adult is not an excluded person (such as an adult with an addiction);
- 5) The Local Authority is satisfied that the adult or nominee is capable of managing a direct payment alone or with assistance; and
- 6) The Local Authority is satisfied that making direct payments is an appropriate way to meet needs.

## Annual Reviews

A Local Authority must review a care plan annually.

An unplanned review can be triggered by a change of circumstances that comes to the Local Authority's attention, so long as a review request is 'reasonable'.

Importantly, an Annual Review should not be used as a mechanism to apply arbitrary cuts to a personal budget.

## What issues commonly arise?

- Self-funders struggle to access needs assessments and care packages.
- Disputes arise in relation to what a Local Authority can take into account as part of the financial assessment process.
- Inaccurate needs assessments lead to inadequate care packages.
- Adults with complex needs who are not eligible for NHS Continuing Healthcare, or jointly funded care packages, struggle to access higher cost funding to ensure the actual cost of meeting complex needs is met.
- Personal budgets are insufficient to meet assessed needs.
- Local Authorities refuse to consider Direct Payments.

- Annual reviews are used to apply arbitrary cuts to personal budgets.
- Psychological, emotional and social needs are not always accorded the same significance as physical care needs.
- Care packages breakdown.

### **How can Lester Aldridge assist?**

At Lester Aldridge we have significant experience in relation to all aspects of Local Authority funded care. We can provide:

- An initial, free consultation to discuss the circumstances of the case and what forms of care and support may be available.
- Advocacy at needs assessments, care & support planning meetings, and resolution meetings where a care package has broken down.
- Needs checklists to support advocacy at assessments and ensure that needs are clearly articulated as part of the assessment process.
- On-going support to negotiate a personal budget, direct payment and implementation of a care package once eligibility for support has been agreed.
- Access to independent Experts to help challenge inadequate needs assessments and care packages.
- Support to challenge or appeals decisions made by a Local Authority.
- Advice at each key stage.