

Disability Law Service

Offering free, confidential legal advice and
representation for disabled people

Eligibility for Adult Social Care

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You can only get access to social care services after your local authority has assessed you as needing one or more services that they are able to provide. Once your Local Authority has assessed your needs, they will decide whether you need help from the services they can provide. They will need to assess you in line with their 'eligibility conditions'. This is a scale which they will assess your needs against, based on a risk assessment that sets out how urgent and serious your need is for certain services.

General Overview

The guidance which governs Local Authorities when making decisions on people's eligibility for social care is the **Fair Access to Care Services Guidance on Eligibility Criteria for Adult Social Care**. The aim of this guidance is to provide local authorities with a framework for setting their eligibility conditions for adult care services. Using this guidance should make assessing people's needs for care consistent and fair across the UK.

Local authorities are entitled to take into account local resources when setting their eligibility conditions. They will review these conditions in line with their budget reviews. The guidance introduces the terms '*presenting needs*' and '*eligible needs*'. Presenting needs are the issues and problems identified when you contact or are referred to social services for help. Eligible needs are needs included in a local authority's eligibility conditions which mean it has a duty to meet these needs.

If your local authority assess you and find you do not meet its eligibility conditions (you are not assessed as having '*eligible needs*'), it should provide you with information, advice and, if necessary, refer you to other organisations that could help. If you have received a service and you no longer fall within your local authority's eligibility conditions, it should make sure that withdrawing the service will not increase your needs or make them worse so that you are not able to live independently.

Assessment

If you consider that you may require assistance from your local authority's social services department, you need to

start by asking for a community care assessment. Your local social services department are under a duty to conduct an assessment of your needs under section 47 National Health Services and Community Care Act 1990, if it appears to them that you may have a need for services from them.

The community care assessment must be carried out within a reasonable amount of time of the request being made, however there is no statutory guidance on what constitutes reasonable. If you feel that your local authority are taking too long to conduct the assessment, you should seek advice as to what action you can take.

If you have already been assessed as needing assistance from social services then, if social services intend to change the provision of services in any way, i.e. by increasing/decreasing or altering services, no change in the service can take place without an assessment of need being carried out first.

The Eligibility Criteria

There are four bands of need based on how serious an assessed person's need for support is. The bands are as follows:

Substantial

This is where you have limited choice and control over your living environment or you are at risk of abuse or neglect. You are not able to carry out most of your personal care or domestic tasks. You are not able to work or get access to education. You cannot maintain full contact with society, take part in family life and other social roles and responsibilities.

Critical

This is where your life is or will be at risk, you have significant health problems, or you are at risk of serious abuse or neglect. You could have little or no choice or control over important parts of your home. You cannot carry out your own personal care or domestic tasks (getting dressed, washing, cooking, cleaning and so on). You are not able to work or get access to education. You cannot maintain contact with society or take part in family life.

Moderate

This is where you are not able to carry out several tasks relating to your personal care or domestic tasks. You are not able to maintain a lot of contact with society or take an active part in family life.

Low

This is where you are not able to carry out one or two tasks relating to your personal care or domestic tasks. You are only moderately able to get involved in work or education. You are able to take part in society and family life, but this could be improved.

Under the guidance, Local Authorities can decide which of these bands they will provide assistance for. It is rare for a Local Authority to provide assistance for people in all four bands of need. Local authorities can take local resources into account when they set these eligibility conditions. If a local authority has a limited budget and can only meet people's needs that fall into the '*critical*' band, other people may not be able to get access to social care even if they fall into the '*substantial*' band.

Local authorities should review their conditions at least every year. If there are any major changes, financial or

otherwise then they may review their conditions more often. The guidance stresses the need for taking action to prevent situations where local authorities are not able to provide care for people who really need it. It gives them advice on how to develop risk assessments to help them identify whose needs appear relatively low but are likely to become more serious over time. The guidance also suggests that local authorities should make it a priority to help groups whose needs would get worse if they did not receive help straight away.

Deciding who is eligible

Local authorities decide who is eligible for help by comparing the risks to a person's independence, health, safety, their ability to manage daily routines and if they get involved in family life and their community life with the eligibility criteria. If a person is eligible for services, local authorities should record and develop care plans in line with the assessment process.

A person's eligibility to services might be affected by the level of support they get from their existing carers. A local authority should not assume that someone has this

support available. They may need to carry out a separate assessment of the needs of the person's carers.

Services

Some local authorities set a limit on the amount they will spend on home-care packages. The FACS guidance says that local authorities can use cost ceilings but only as a guide. A local authority may also need to spend more on services for certain groups of people because the cost of providing specific services are higher than for other groups.

Local authorities should not have a policy not to provide certain services. They should always be able to provide a full range of services. All service providers should be able to provide a 'Statement of Purpose' (a document which sets out what the organisation is supposed to do).

Local authorities should promote **direct payments** (cash payments to let you buy your own care services) and set aside a budget for them. They should be flexible with their conditions for direct payments so that anyone who wants them can receive them.

Care Plan

Your local authority should develop your care plan with you. As a minimum your care plan should include:

1. What your needs are and any related risks;
2. What service you would prefer;
3. A plan in case of an emergency;
4. Details of the services you are going to receive, anything you have to pay towards these services or if you have been awarded a direct payment;
5. Any care your carers are willing and able to provide;
and
6. A date to review the care plan.

Your local authority should give you a copy of your care plan. The services it includes should be suited to your needs and circumstances, for example: taking account of what the services are going to cost. Your local authority should provide you with services as soon as possible, and, if it is likely that this will take some time, it must make other arrangements until it can provide these services.

Changes and Reviews

Your local authority should make arrangements to adapt your services as you get older and as your needs change. If you move to another local authority, the new authority should assess your needs, taking account of the services you were receiving before you moved.

Your local authority should review your care plan within three months of creating a new care package, and then review it every year after that. You can also ask your local authority to review your care plan at any time. You and your carers should normally be involved in each review. Local authorities must bear in mind that sometimes, it may be best for an independent social-care consultant to carry out an assessment, instead of someone they employ.

Your local authority must keep a record of each review and update your care plan as necessary.

Emergencies

In an emergency, your local authority can sometimes provide you with services immediately before they have carried out your assessment.

Your Financial Situation

Your local authority should not take your financial situation into account until they have carried out your assessment. They should carry out a financial assessment after they have decided what care you need, to decide how much you should contribute towards your care. They should let you see all the information they have relating to your financial assessment.

If you are not eligible

If your local authority decides that you are not eligible for services, it must be satisfied that your needs will not get significantly worse or increase in the near future. It should be sensitive to your circumstances if it decides to withdraw your services and look at what it agreed with you when it first created your care package. If your local authority cannot offer you services or withdraw them, it should write to you telling you why and provide you with information and details of other agencies that may be able to help. It should also give you information about its complaints procedure.

If you would like any further information on the issues discussed in this factsheet, or on any other issues related to social care, please call the Disability Law Service on 0207 791 9800.

This factsheet was drawn up with the assistance of the MS Society.

Legal Disclaimer

Although great care has been taken in the compilation and preparation of this work to ensure accuracy, DLS cannot accept responsibility for any errors or omissions. All information provided is for education / informative purposes and is not a substitute for professional advice. Any organisations, telephone numbers and links to external web-sites have been carefully selected but are provided without any endorsement of the content of those sites.

For further advice on these matters please contact:

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