

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

including eligibility, care and support planning and direct payments

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

(Short title: *Code of Practice on Meeting Needs*)

Preamble

This code of practice is issued under section 145 of the Social Services and Well-being (Wales) Act 2014. Local authorities, when exercising their social services functions, must act in accordance with the **requirements** contained in this code. Section 147 (Departure from requirements in codes) does not apply to any **requirements** contained in this code. In addition, local authorities must have regard to any **guidelines** set out here.

In this code and statutory guidance, a **requirement** is expressed as “must” or “must not”. **Guidelines** are expressed as “may” or “should/should not”.

This code should be read in conjunction with Part 4 of the Act and regulations developed under section 32 (determination of eligibility), sections 54 and 55 (care and support plans and support plans), and sections 50, 51, 52 and 53 (direct payments) in Part 4 of the Act on Meeting Needs.

This code of practice on eligibility, care planning and direct payments is fundamentally linked to the code of practice on assessment and review under Part 3 of the Act, as both codes are critical to the design and delivery of the new system for accessing and delivering care services.

In exercising their functions relating to determining eligibility, care and support planning, and direct payments, local authorities **must** have regard to their overarching duties set out in section 6 of the Act and their duties to have due regard to the United Nations Principles for Older persons and Part 1 of the United Nations Convention on the Rights of the Child as set out in section 7 of the Act.

Determining Eligibility

Purpose

The Social Services and Well-being (Wales) Act 2014 (hereafter referred to as ‘The Act’) and its associated statements are clear about the purpose of eligibility criteria in the new framework for care and support in Wales. This code aims to

- determine the point at which an individual will have an enforceable right to support from the local authority and the authority has a legal duty to provide or arrange care and support.
- set an eligibility test that will apply to all people – children, adults and carers.
- set out the requirements of a care and support plan.

The local application of the determination of eligibility **must** support a move away from the deficit model of care (“what is wrong?”) to an emphasis on strengths, capacity and capabilities (“what can I do? /how can I get help?”), and thereby focus on enabling services. The approach to determining eligibility **must** be an outcome-based approach to eligibility that relates closely to the National Outcomes Framework. The starting point is the meaning of “well-being” as set out in Part 2 of the Act and the local authority **must** determine whether the provision of care and support, or support in the case of a carer, will assist the person to meet their personal outcomes within that framework of well-being. The local authority **must** be clear about what matters to the person, and what the person themselves can do to maximise their own well-being.

The application of national eligibility criteria for care and support has an important part to play in securing rights for people and ensuring local authorities meet their

duties. The framework for eligibility presented in this code is a rights-based approach that promotes the individual's voice and control over the services they receive by **requiring** local authorities to consider, in partnership with the citizen, a bespoke response for each person. It also recognises the contribution people can make to their own well-being, and their responsibility to do so.

It is a principle of the Act that local authorities should respond in a person-centred, co-productive way to each individual's particular circumstance and further that individuals and their families are able to fully participate in the process of determining and meeting their identified care and support needs through a process that is accessible to them. This will include determinations of eligibility for care and support being undertaken through the person's language of need and preferred means of communication and in a style and manner appropriate to their age, disability and cultural needs.

The eligibility framework set out under the Act is designed to ensure that the duties of the local authority are clear and that the rights of the individual are upheld. These are:

- An enforceable right of the individual whereby the local authority **must** assess their need for care and support and **must** consider what could be done to meet needs; determine whether any of the needs meet the eligibility criteria, or **must** otherwise be met by the local authority.
- An eligibility criteria against which the needs of all individuals are to be assessed, but also to provide an **automatic right** to eligibility for those adults at risk of abuse or neglect or in the case of a child, at risk of abuse, neglect or other harm.
- An approach to determining eligibility for care and support that recognises the distinction between the local authority's general duties (as set out in Part 2 of

the Act) and the establishment of an **enforceable right** for the individual to have their needs met by the local authority providing or arranging the provision of care and support (as required by parts 4 of the Act) if the needs meet the eligibility criteria.

- A **requirement** that an individual with needs for care and support has a **right** to the delivery of care and support provided or arranged by the local authority through a care and support plan where those needs cannot be met by themselves alone (or in the case of a child together with parents or other persons caring for the child), or with the support of others, or with the assistance of services in the community.

Context

Determining eligibility is not about giving a right to any one service, it is about guaranteeing access to care and support where without it the person is unlikely to achieve their well-being outcomes. Fundamental to this determination is an understanding of what actions the person can contribute to achieving their outcomes, with the support of their family and their community where this is available.

The Code of Practice on eligibility is designed to encourage the local authority to meet its duties to provide or arrange for the provision of preventative services, to promote social enterprises, co-operatives, user led services and the third sector and to provide information, advice and assistance services. The more people whose personal well-being outcomes can be met under these general duties the fewer people will need to be attended to through the individual right to the design and delivery of a care and support plan.

The approach to assessment of need and determining eligibility for local authority arranged or provided care and support should be one that focuses on people's strengths and abilities, as well as on their needs and the barriers they face, to achieve the outcomes that maximise their well-being.

The code also recognises that eligibility status is transient as it is affected by a person's changing circumstances. A person's capacities and support mechanisms will vary over time and it is this that will determine the status of a need as an 'eligible' need. The local authority's approach to meeting people's needs for care and support **must** be sufficiently responsive to ensure that an individual has access to the right support to attain their well-being outcomes irrespective of their eligibility status.

As part of the determination of eligibility, the local authority **must** also consider what the person themselves can contribute and whether the person would benefit from any preventative services; information, advice or assistance; or anything else that may be available in the community. This links to the considerations that **must** be given during the assessment process.

Process

To determine whether an individual is eligible for care and support, as described above, a local authority **must** carry out an assessment encompassing a set of 5 elements to ensure that local authorities consider the person's circumstances in the round.

These 5 elements are:

- Personal well-being outcomes
- Barriers to achieving personal well-being outcomes
- A person's circumstances
- A person's strengths and capabilities
- Risks to meeting well-being outcomes

Further information about these 5 elements is available in the code of practice on assessment and review under Part 3 of the Act.

During the assessment all five of these factors **must** be taken into account, and from this, a judgement reached about whether the person is eligible for care and support, based on the criteria set out in the Care and Support (Eligibility) (Wales) Regulations 2015. These regulations set out separate but parallel processes for determination of eligibility with respect to adults, children and carers.

Outcomes to which needs for care and support must relate (Specified Outcomes)

The personal well-being outcomes to which a need **must** relate are set out in the regulations as:

- ability to carry out basic self-care¹ or domestic routines;
- protection from abuse or neglect;
- involvement in work, education, learning 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;
- in the case of an adult, fulfilment of caring responsibilities for a child; or
- in the case of a child, achieving developmental goals.

Needs which meet the Eligibility Criteria

1) For adults:

- The need must arise from the adult's physical or mental ill-health, age, disability, dependence on alcohol or drugs, or other similar circumstances and must relate to one or more of the outcomes specified in regulations.
- The need must be such that the adult is not able to meet that need, either alone, or with the support of others who are willing to provide that support, or with the assistance of services in the community to which the adult has access; and
- The adult is unlikely to achieve one or more of their personal well-being outcomes unless the local authority provides or arranges care and support to meet the need; or the local authority enables the need to be met by making direct payments.

2) For Children

- The need must arise from the child's physical or mental ill-health, age, disability, dependence on alcohol or drugs, or other similar circumstances; or the need is one

¹ "basic self-care" means essential tasks that a person carries out as part of normal daily life.

that if unmet is likely to have an adverse effect on the child's development²; and the need must relate to one or more of the outcomes specified in regulations.

- The need is one that neither the child, the child's parents nor other persons caring for the child³ are able to meet, either alone or together, or with the support of others who are willing to provide that support, or with the assistance of services in the community to which the parents or other persons caring for the child have access; and
- The child is unlikely to achieve one or more of their personal well-being outcomes unless the local authority provides or arranges care and support to meet the need;

3) For Carers

- The need is one that arises as a result of providing care for either a disabled child or an adult who has needs arising from physical or mental ill-health, age, disability, dependence on alcohol or drugs, or other similar circumstances or
- The carer cannot meet the need whether alone; or with the support of others who are willing to provide that support; or with the assistance of services in the community to which the carer has access; and
- The carer is unlikely to achieve one or more of their personal well-being outcomes which relate to the specified outcomes unless the local authority provides or arranges support to the carer to meet the carer's needs or the local authority provides or arranges care and support to the person for whom the carer provides care, in order to meet the carer's needs.

The determination of eligibility is distinct from any financial assessment that the local authority is required to make under Part 5 of the Act where it is empowered to seek a contribution to the cost of care and support provided. However the financial assessment may inform the citizen's decision on whether to accept the local

² References in this code to a child's development include the physical, intellectual, emotional, social and behavioural development of that child;

³ "other persons caring for the child" includes persons with parental responsibility or relatives who have a role in providing care for the child; "relative" is defined in section 197 of the Act

authority care and support plan or take a different route to achieving their identified outcomes.

In these criteria the reference to the local authority preparing a care and support plan, and ensuring that it is delivered, includes a care and support plan which can be self-managed (i.e. through the use of direct payments).

The delivery of care and support **must** include personal care where this is needed.

The National Threshold

This model of determining eligibility through assessment ensures a national threshold at which each local authority will be required to meet a person's need for care and support through the planning and delivery of a care and support plan. Although the pattern of service delivery will vary from authority to authority; what remains constant is the right to care and support from a local authority where that care and support is not otherwise available to the individual with needs which relate to the specified outcomes.

That National Threshold is expressed through the following principle:

The person has needs which meet the eligibility criteria if an assessment establishes that they can, and can only, overcome barriers to achieving their well-being outcomes by the local authority preparing a care and support plan (or a support plan for a carer) to meet their assessed needs, and ensuring that the plan is delivered.

This principle has come to be known as '**The Can and Can Only Test**'

The first part of the Can and Can Only Test is whether or not a care and support intervention can address the need, risk or barrier, or enhance the resources that will enable the individual to achieve their personal well-being outcomes. If the provision of care and support cannot help the person achieve their outcomes the question of eligibility does not arise. This is the 'Can' part of the 'Can and Can Only' Test. It is not the purpose of the eligibility criteria to draw local authority care and support services into challenges they cannot address (such as provision of health care, employment, education etc.).

The second part of the test is the determination that the individual's well-being outcomes cannot be met, or cannot be sufficiently met, solely through care and support co-ordinated by themselves, their family or carer, or others, and so the individual requires support to co-ordinate that care and support or to manage it completely.

This part of the test will flow from, and is a product of, the assessment process as described in the Code of Practice on Part 3 of the Act. In this respect assessment is a key element in the determination of eligibility and the two sets of regulations and codes of practice need to be read together.

When this test is satisfied, the local authority **must** devise, in partnership with the person, a care and support plan, or a support plan for a carer, that will ensure that his or her needs are met and enable him/her to achieve their personal well-being outcomes - and the local authority **must** then ensure the delivery of that plan. The process of devising that care and support plan should be based on the presumption that the adult is best placed to judge their own well-being and that care and support plans (and support plans for carers) should be co-produced in partnership with adults and those authorised to act on their behalf, and with children, and those with parental responsibilities for those children.

If a person's needs meet the eligibility criteria, it is the legal duty of the local authority to ensure that care and support is properly delivered.

The care and support provided **must** be able to support people to access any appropriate community based services where these contribute to meeting the person's well-being outcomes.

The adoption of this process will mean that fewer people will require care and support intervention though the planning and delivery of a care and support plan by local authorities.

Requirements to Meet Needs irrespective of the 'Can and Can Only' Test

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

Adults

Local authorities **must** meet those needs which the local authority considers it is necessary to meet in order to protect an adult from abuse or neglect, or risk of abuse or neglect. This is an overriding duty on local authorities irrespective of any application of, or outcome from, the 'Can and Can Only Test'.

Children (including young carers)

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

Duty to maintain family contact

If the local authority considers it necessary in order to promote the well-being of the child it **must** take such steps as are reasonably practicable to enable the child to live with his/her family or promote contact between the child and his/her family

Powers to meet needs

Discretionary powers are also provided in the Act to enable local authorities to meet the care and support needs of an individual irrespective of the eligibility determination. These powers also enable local authorities to respond to urgent need, or to act to protect a person without the need for first completing an assessment or determining eligibility. These powers can also be exercised in relation to any person who is within the local authority's area, even if they are not ordinarily resident in the area.

A note on carers and care and support provided by children's families:

The duty on a local authority to meet an adult's needs for care and support does not apply where the local authority is satisfied that those needs are being met by a carer to the extent that they are willing and able to do so⁴. Similarly the duty to meet a child's needs for care and support does not apply where the local authority is satisfied that those needs are being met by the child's family or by a carer to the extent that they are willing and able to do so.

The eligibility status of an adult where there is a carer, and a child where there is a family or a carer, **must** be identified through an assessment process that is appropriate and proportionate to the presenting need and considers fully the care and support needs being presented regardless of any support being provided by the carer or the child's family. This is so that the eligibility status of the adult or child can be identified and preserved such that the local authority is able to respond appropriately and quickly where the carer or the child's family becomes unable or unwilling to meet some or all of the identified care and support needs.

⁴ Where the carer is a child the local authority **must** have regard to his or her developmental needs and the extent to which it is appropriate for the child to provide the care. This should lead to consideration by the local authority of whether a child carer is actually a child with care and support needs in his or her own right and who therefore should be assessed under section 21 of the Act. For guidance on assessing the needs of children who are carers please refer to the code of practice in relation to Assessment and Review under Part 3 of the Act.

Post-Determination

Even where a determination of eligibility is made there remains a **duty** on the local authority to support people to access any appropriate community based services where these contribute to meeting the person's well-being outcomes.

Following the determination of eligibility it is strongly advised, but not required, that the individual and the local authority will agree the care and support plan. However, the local authority may also determine that someone has a right to care and support even though that person may refuse to accept it. In these instances the local authority **must** record why a care and support plan was refused. The eligibility status **must** be preserved and the local authority **must** re-frame their support so as to maintain their awareness of the person's needs and enable an appropriate and timely response should the person re-consider their refusal of care and support.

Should a person lack capacity to make the decision to refuse a care and support plan the local authority **must** meet its duties under the Mental Capacity Act 2005 and associated Code of Practice⁵. All reasonable steps should be taken to maximise a person's ability to communicate their wishes so as to ensure that the care and support plan is in the person's best interests and is appropriate to their identified needs.

Where the local authority assessment is that the individual does not require a care and support plan and the individual disagrees with that assessment then the individual will be informed of their **right** to access the complaints process and supported through that process. Where needs and circumstances change the individual has the **right** to request a re-assessment of their needs for care and support.

⁵ Link to the codes of practice for the Mental Capacity Act 2005
<https://www.wales.nhs.uk/sites3/page.cfm?orgid=744&pid=36239>

Through this process the individual is able to remain involved in the determination of eligibility for care and support where that person feels that their personal well-being outcomes are not being met through the provision of information, advice and assistance, preventative services, or anything else that may be available in the community.

Care and Support Planning (including Direct Payments)

Explanatory Statements

In this code of practice, except where otherwise indicated, any reference to duties or powers in relation to Care and Support Plans should be read as applying equally to Support Plans for Carers. Similarly any reference to 'Care and Support' should be read as referring to 'Support' where this applies to Carers.

Where an individual uses Direct Payments to manage their own care (either directly or through another) those Direct Payments will form part or all of a Care and Support plan. The Act refers to identifying outcomes for individuals and the delivery of care and support to meet the needs of individuals. This code of practice does not preclude a care and support plan meeting the needs of the individual by the delivery of care and support to members of the individual's family where that is the most appropriate way to meet the needs of individuals within that family and support those individuals to achieve their personal well-being outcomes.

Purpose

Section 54 of the Act provides that a local authority **must** prepare and maintain a care and support plan or a support plan for a person whose needs it is required to meet. The plans **must** be kept under review. If the local authority believes that a person's circumstances have changed in a way that affects the plan, it **must** conduct such assessments as it considers appropriate and revise the plan in the light of those assessments.

This code of practice covers the duties and functions on local authorities with respect to care and support planning and review arrangements for individuals and families.

Requirements

Right to a care and support plan and review of plans

Local authorities **must** provide and keep under review care and support plans for people (children and adults) who have needs which meet the eligibility criteria and for people where it appears to the local authority that it is necessary to meet the person's needs in order to protect the person from abuse or neglect or the risk of abuse or neglect (and in the case of a child: harm or the risk of harm).

Where the local authority's duties to a child fall under Part 6 of the Act (Looked After and Accommodated Children) the local authority **must** review the care and support plan in line with the requirements of the regulations made under that part of the Act. Similarly local authorities **must** provide and keep under review support plans for carers whose needs meet the eligibility criteria. This is in order to promote consistency between plans for carers and to treat carers in the same way as people with needs for care and support.

Many individual's and families' needs can be met without a formal care and support plan. In such instances the Information, Advice and Assistance Service or other preventative and community based services such as those from social enterprises, co-operatives, third sector, and user-led services **must** be clearly signposted.

Local authorities are **required** to prepare a care and support plan for those persons to whom it has a duty to meet needs – i.e. that their needs meet the eligibility criteria or the needs must be met for another reason (such as protection from abuse etc.) – where that person is unlikely to achieve their personal outcomes unless the local authority provides or arranges care and support to meet an identified need.

Where the person is a carer with support needs the local authority can meet those needs through preparing a care and support plan for the person for whom the carer provides care.

Principles of Care and Support Planning

The following principles should underpin the process of preparing care and support plans and should be used as the basis for testing the fitness of any local or specialist arrangements:

- **People centred:** Individual and family views and wishes will shape the form of engagement with services where this is appropriate. The person and family themselves will be enabled and supported to have a strong voice and control. This will include the option of individuals receiving direct payments to their meet care and support needs, or in the case of carers, their support needs.
- **Promote Well-being:** Services will build on people's and families' strengths and abilities and enable them to maintain an appropriate level of autonomy with the appropriate level of care and support.
- **Outcome Based:** work with people and families will be based on a comprehensive analysis of; needs; personal outcomes; risks; and the capacity and resources people and families have available to them.
- **Involving wider family, community and carers:** Services will recognise the contribution of the wider community, family and carers and seek to provide support to them whenever appropriate.
- **Proportionate:** the depth and detail of care and support will be appropriate to the person's or family's needs. All practitioners will play a pro-active role in helping people and their families to get appropriate early help and support.
- **Use appropriate language and communication methods:** Individuals and their families will be able to fully participate in their assessment and care and support planning process by having all relevant information available in a format that is accessible to them including through their language of need and preferred means of communication. It should be accessible through the medium of Welsh and English reflecting the Welsh Government Strategy 'More than Just Words'.
- **Clear:** work with individuals and families will be straightforward and understandable for them. People will be informed of the process and their rights. Support will be based on evidence and research about what works. This should not exclude innovative practice.
- **Safeguarding & Protecting:** all practitioners will be alert to any risk or harm to the individual or to others – including others in their care. Assessment and care and support planning will explore the possible responses to those risks and agree approaches to risk management and/or mitigation.

- **Integrated:** support for people and families will be based on a consistent and common framework across services, and jointly owned and operated by practitioners, in order to ensure that people receive timely and effective access to safe care and support.
- **Sustainable:** Services will be based on proven methods, be cost effective and keep families together where it is safe and appropriate to do so. This will include supporting people at home and minimising the potential for the breakdown of support. This should not exclude innovative practice.
- **Informed:** information and specialist assessments about a person, family or carers will be shared between relevant agencies wherever agreed by the individual, and be of a depth and detail appropriate to the person's needs.
- **Equitable:** services and systems will provide equity of opportunity and will respect diversity of needs..
- **Delivered by the right people:** care and support will be delivered through an appropriate mix of suitably experienced and qualified staff.
- **Performance Measured:** the effectiveness of care and support services will be judged on a combination of individual service user, family and colleague feedback, regular local evaluation with service users and other stakeholders, and national performance indicators based on the Welsh Government outcomes framework.

The depth and detail of the assessment and care and support planning process **must** be appropriate to the individual's needs. The complexity or severity of the person's, or family's, need will determine the scope and detail of the care and support plan and the range of interventions, including the type of support, and the frequency of reviews.

The process of identifying care and support needs and preparing a care and support plan **must** ensure that people are empowered to express their needs and are able to fully participate as equal partners.

Overlapping Duties to Prepare Care and Support Plans

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

Where there are overlapping duties to prepare plans that are nationally or legally prescribed (for example a Care and Treatment Plan prescribed under the Mental Health (Wales) Measure 2010 or a 'section 31A plan' prepared for the purposes of Part 4 of the Children Act 1989), and there is a plan that meets the requirements of a care and support plan; the preparation, delivery and review of that plan can be regarded as the way for the local authority to meet its duties to prepare, deliver and review a care and support plan.

Where there are well-being or specialist plans which do not meet the requirements of a care and support plan the local authority **must** ensure that practitioners have regard to the requirement of the regulations on care planning and this Code of Practice but **must** combine the care arrangements into a single integrated care and support plan. This will include plans relating to the safeguarding of the individual.

The section on information sharing (below) sets out the responsibilities on agencies to share appropriate and relevant information between practitioners and service providers to support the preparation, delivery, and review of a single integrated care and support plan that meets the assessed needs of the individual or family.

Preparing and Delivering Care and Support Plans

Local authorities should work with their local health board and NHS Trusts to agree arrangements across the local health board footprint area for delegating practitioners to work with those whose needs require a care and support plan.

Where a local authority is required to prepare and maintain a care and support plan or a support plan, it **must** ensure that there is a named individual practitioner to coordinate the preparation, completion, review, delivery and revision of the plan. This will include monitoring the delivery of the services and support delivered through the plan where it is agreed that this is required. The responsibilities of this role will include: to draw in additional specialists as required; to act as a focus for communication for different practitioners and the individual; to make sure that information is recorded correctly and that the care and support plan is made available to the individual; and to ensure that any problems or difficulties in the coordination or completion of a review are resolved

A local authority **must** ensure that any person responsible for preparing, reviewing or revising a care and support plan or support plan:

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

A care and support plan could relate to a single service meeting one or more care and support needs or be more complex and involve mapping out several different services meeting one or more needs. A care and support plan could include actions which are self-managed alongside those which are managed by the local authority.

Financial

In cases where the care and support plan identifies care and support which may require a financial contribution from the individual, arrangements **must** be made to ensure the individual is clear about this, and that a financial assessment is undertaken where this is required under Part 5 of the Act.

Format of Care and Support Plans

The format of the care and support plan **must** be agreed by the local authorities and local health board and NHS Trusts and, as a minimum, be consistent across the regional footprint of the local health board. This requirement does not prevent local authorities and local health boards and NHS Trusts working together on a wider, or national basis, to develop a consistent format for care and support plans.

To promote consistent practice across Wales the national minimum core data set ensures that individuals can rely on their local agencies to have a common baseline of information in all care and support plans across the country. This will mean that practitioners across regional local health board areas will share a common data set as the basis for well-co-ordinated services and prevents an individual being asked the same information more than once. For further guidance on the core data set please refer to the code of practice on Part 3: Assessment and Review.

Local authorities **must** work together with local health boards and NHS Trusts to ensure that local and specialist templates for care and support plans meet the national minimum core data set. The core data set should enable practitioners to quickly identify and reference other health, care and support, and well-being assessments and care plans that have been provided to the individual and/or family.

The core data will have been collected during the assessment and should not need to be collected again, although it may need to be checked for accuracy and updated. The named lead practitioner responsible for the co-ordination of the care and support planning and review process should source this information from the record of the assessment and transfer to the care and support plan.

For many people being able to use the Welsh language enables them to communicate and participate in their care as equal partners. Local authorities should make sure Welsh language services are built into the process of care and support planning and ensure that individuals and their families can fully participate in the process of care and support planning by making all relevant information available in a format that is accessible to them through their preferred means of communication.

Content of Care and Support Plans

It is the responsibility of the practitioner who has developed the plan with the individual to ensure there is a clear and concise confirmation of the agreed actions, and who will undertake them within the plan.

Care and Support Plans **must** cover the following:

- The outcomes which have been identified in relation to the person to whom the plan relates
- The actions to be taken by the local authority and other persons to help the person achieve those outcomes
- The needs that will be met through the delivery of care and support
- How progress towards achieving those outcomes will be monitored and measured
- The date of the next review of the care plan

Care and Support plans may also need to set out:

- The roles and responsibilities of the individual, carers and family members, and practitioners
- The resources (including financial resources) required from each party

Where some or all of the person's needs are to be met by making direct payments, a care and support plan and a support plan **must** also contain a description of:

- the needs which are to be met by direct payments, and
- the amount and frequency of the direct payments

Where enquiries have been made by the local authority in accordance with its duty under section 126 (2) of the Act (adults at risk), the care and support plan for the individual who is the subject of those enquiries **must** contain a record of the conclusion of the enquiries.

Care and Support Plans **must** contain a clear date, which should be agreed with the individual and/or family, by which the plan will be reviewed. Local authorities, with their partners **must** have in place arrangements to review or re-assess more promptly whenever it may appear that the current plan is not meeting the individual or family's needs.

Length of Visits

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

Information Sharing

The willingness and ability to share appropriate and relevant information between practitioners and service providers is inherent to the delivery of effective care and support services.

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

Working with individuals and families within a professional relationship built on trust, respect and confidence should help to ensure that this conversation is not a difficult one. Being open and honest, including being clear about information sharing and respecting people's wishes wherever possible, will help to maintain this trust and confidence. This conversation is an integral part of making sure that the practitioner fully understands the person's needs and how best to meet those needs, including which other practitioners may be able to support them.

This code endorses the Caldicott 2⁶ recommendations that “... *there should be a presumption in favour of sharing for an individual’s direct care and that the exceptions should be thoroughly explained, not vice versa. The motto for better care services should be: ‘To care appropriately, you must share appropriately’.*” Therefore the presumption should be that all information is shared.

Local authorities **must** work with their partners to have systems in place to ensure that, as a minimum, information in the national Core Data Set for any individual or family is shared safely and appropriately between partners. This will include using the WASPI⁷ information sharing framework and developing WASPI - compliant information sharing agreements which should ensure to a great extent that the arrangements put in place will be compliant with the Data Protection Act 1998 (DPA).

Local Authorities **must** also ensure that their staff are supported and trained appropriately in both information sharing and compliance with the DPA. Staff accessing or using the data **must** be trained in good data handling and be aware of security issues. Individuals and families **must** be informed of this sharing at the start of the assessment and care and support planning process.

The local authority **must** offer a copy of the care and support plan, support plan or closure statement (as the case may be) to the person to whom the plan or closure statement relates and to any person authorised to act on behalf of that person. These plans **must** be made available in the person’s language of need and in a format that is accessible to them through their preferred means of communication.

Portability of Care and Support Plans

When an individual who is in receipt of services or support through a care and support plan has informed the authority from which they intend to move that they will be moving to another area in Wales that authority **must** notify the authority to which the person intends to move of this information. When an individual in receipt of care and support through a care and support plan moves from one authority area to

⁶ Caldicott 2 - <http://www.wales.nhs.uk/sites3/page.cfm?orgid=950&pid=68298>

⁷ Wales Accord on the Sharing of Personal Information <http://www.waspi.org/>

another authority area within Wales, the information contained within the assessment and the care and support plan **must** be made immediately available to the new authority and be used as the basis for delivery of support until a new assessment is undertaken.

These portability arrangements do not apply to care and support plans for people whose plans are provided under the local authorities' discretionary power. In such cases there will be not be a duty on the new authority to put in place transitional arrangements. However the arrangements do apply where enquiries have been made to determine whether an adult is at risk as part of ongoing safeguarding procedures.

There is an expectation that good practice will apply when a person moves across national boundaries to minimise disruption of the care and support provided to that person.

Review of Care and Support Plans

Local Authorities **must** review care and support plans for individuals to understand whether the provision of that care and support is meeting the identified needs of the individual, consider if their needs have changed, and if a re-assessment is required.

The purpose of a review is to systematically revisit the care and support plan to monitor progress and changes; consider the extent to which the delivery of the plan is meeting assessed needs, how it has helped the individual or family to achieve their outcomes; determine what support is needed in future, and confirm, amend or end the services involved. This **must** be reflected in the recording of the review.

A review is a key part of effective health and social care and good arrangements can ensure that services remain appropriate, well targeted and relevant to the individual, and encourage the individual to continue to maintain control over their support.

The review arrangements **must** ensure that the individual or their carer or representative (where appropriate) is an active participant in the review.

Where appropriate and feasible and with the agreement of the person concerned⁸; when carrying out a review the local authority should involve, the following people::

- The person
- any carer of the person
- any person whom the person (or parent in the case of a child) asks the local authority to involve
- in the case of an adult who lacks the capacity to decide who to involve, any person authorised to make decisions about the individual under the Mental Capacity Act 2005; or
- in the case of a child the persons with parental responsibility for the child
- other practitioners/ professionals who have undertaken or will need to undertake a related assessment
- other practitioners/ professionals with expertise in the circumstances or needs of the person concerned.
- any other person who the local authority considers to have sufficient involvement in the care or support arrangements for the person.

Local authorities **must** carry out further assessments and revise the care and support plan if there has been a change in the person's circumstances. Local authority responsibilities relating to this requirement are set out in more detail in the Code of Practice in relation to Assessments and Review under Part 3 of the Social Services and Well-being (Wales) Act 2014

All Care and Support Plans **must** have a review date. This date **must** be agreed or set at the inception of the care and support plan and each subsequent review. A care and support plan and a support plan **must** be reviewed within such period as is agreed between the local authority and the person to whom the plan relates and any person who the local authority is required to involve in the preparation and review of the care and support plan.

⁸ or the parent in the case of a child, or any person duly authorised to make decisions on behalf of a person who lacks capacity to agree

Where the plan contains details of direct payments, any review of the direct payments **must** involve a review of the care and support plan. Where someone is in receipt of direct payments and the review of the care and support plan results in a change to the care and support plan there **must** be a review of the direct payments.

Irrespective of the agreed review date the local authority **must** agree to a review where it appears to the local authority that the care and support plan is not meeting the assessed needs of the person to whom the plan relates.

The person to whom the plan relates, persons with parental responsibility for that person, or persons with legal rights to act on the person's behalf, may request a review of the plan prior to the date agreed for the review of the plan. The local authority **must** comply with that request where it appears to the local authority that the care and support plan may not be meeting the identified needs of the individual or helping them to achieve their personal well-being outcomes.

Closure

Following the review, the local authority **must** consider whether to confirm, revise or close the plan. If it is decided to confirm the plan, the decision and the reasons for the decision **must** be recorded. If it is decided to close the plan, the local authority **must** prepare a closure statement.

Where it is planned that services will no longer be provided the review **must** include a closure statement covering reasons for closure; an evaluation of the extent to which the outcomes were achieved; and confirmation that the individual or family has appropriate information, advice or assistance and / or access to community based preventative services to meet their needs.

Direct Payments

Overview

Direct payments are monetary amounts made available by local authorities to individuals, or their representative, to enable them to meet their care and support needs; or in the case of a carer, their support needs. Direct payments are an important mechanism by which people can exercise voice and control to decide how to meet their needs for care and support and achieve their personal well-being outcomes. As such direct payments are an integral part of meeting people's needs through care and support planning, and **must not** be seen as a separate, secondary, consideration.

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

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

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

In the provision of, and operation of, direct payments authorities **must** follow the provisions of the relevant section of the Act. They **must** also follow the relevant section(s) of the regulations on direct payments, "The Care and Support (Direct Payments) (Wales) Regulations 2015" made under sections 50, 51, 52 and 54 of the Act.

Offer and Scope of Direct Payments

Where eligible care and support needs, or support needs in the case of a carer, have been identified, direct payments **must** be made available in all cases where they can meet the needs identified to achieve personal well-being outcomes. This is where that individual, or their representative, have expressed a wish to receive one. Local authorities **must** work with people, or their representatives, to explore all ways in which a direct payment for them would secure such outcomes. Direct payments **must not** be refused due to administrative or financial reasons but only where it is clear after such exploration that a direct payment would not secure the well-being outcomes.

Individuals **must not** be refused a direct payment purely because they are unable, or unwilling, to manage all aspects of a direct payment. Local authorities, in partnership with the person, **must** explore all options for supporting an individual to manage a direct payment. Where areas of difficulty are identified, local authorities **must** ensure that support to overcome this is available.

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

In developing care and support plans which are delivered via a direct payment, local authorities **must** be satisfied that the person's needs and their well-being outcomes can and will be met through the direct payment. Where a person's needs fluctuate over time, local authorities **must** work in partnership with the individual, or their representative, to agree how the direct payment will be used to secure care and support that varies according to need.

Local authorities **must** work in partnership with individuals, or their representatives, to develop ways in which their needs are met to achieve their personal well-being outcomes. Where barriers to achieving this exist, local authorities **must** work in partnership with individuals, or their representative, to explore alternative ways to achieving their outcomes to overcome such barriers.

Local authorities **must** promote self-management in this respect to enable people to become actively involved in shaping their care and support. In the development of, and provision of a direct payment local authorities **must** encourage and support people to determine their own well-being outcomes, and the care and support they require to achieve these taking into account their existing support networks. People **must** be encouraged to find creative ways to meet their personal well-being outcomes.

Capacity to Consent - Appointing a Suitable Person

If an individual lacks capacity to manage a direct payment or chooses not to manage the payment themselves, the direct payment can be paid to, and managed by, someone acting on their behalf. Such representatives can be those appointed by a court to act on an individual's behalf, or someone a local authority appoints, or someone the individual chooses to act on their behalf (see Capacity to Consent in the attached annex). Such representatives can themselves have support to manage a direct payment where they require one.

Direct Payment Recipients as Employers

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

Calculating the Amount of Direct Payments

Local authorities **must** ensure the level of direct payments made is equivalent to its estimate of the reasonable cost of securing the care and support required, subject to any contribution or reimbursement the recipient is required to make. The level of direct payments **must** be sufficient to enable the recipient, or their representative, to secure the care and support required to a standard the local authority considers reasonable. While there is no limit on the maximum or minimum amount of direct payments, it must be sufficient to enable the well-being outcomes of the individual who is subject of the direct payment to be met.

In calculating the level of direct payments local authorities **must** include associated costs without which the care and support could not lawfully be obtained, such as statutory costs associated with being an employer. Local authorities **must** also consider including, on a case by case basis, discretionary costs associated with the care and support required which may be necessary to achieve the recipient's well-being outcomes.

Local authorities **must** keep up to date with external factors that may affect the level of a direct payment made so as to be able to make reasonable adjustments to their level of funding where and when appropriate.

Review of Direct Payments

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

Supplement to Code on the Operation of Direct Payments

Developing Direct Payments

In addition to working with individuals to develop ways in which they can meet their needs, local authorities **must** develop their direct payments schemes to be responsive to the solutions and outcomes, and more relevant to the communities in which they live. They **must** work in partnership with local care and support providers to support initiatives to meet well-being outcomes. Development of direct payments should explore not only traditional ways of meeting care and support needs but also innovative and developing ways, such as social enterprises or co-operatives, to ensure that a range of ways of meeting the needs of people are available.

Information and Support

Local authorities **must** provide appropriate, accessible information and support to enable people, or their representatives, to decide whether they wish to receive a direct payment. Such information and support **must** be suitable to meet their communication needs and **must** be sufficient for the person, or their representative, to be able to make an informed decision.

Local authorities **must** develop local support services for direct payment recipients which are able to provide all the help and assistance a recipient, or their representative, would require to receive and manage a direct payment. Such support services **must** be able to meet all the support needs of recipients to enable them to achieve their personal well-being outcomes. Local authorities **must** explore, in partnership with recipients, the different models of support which can be provided to ensure the arrangements they have in place are effective, responsive to recipients' needs and are person centred.

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

Managing a direct payment is not simply about handling money. Local authorities **must** ensure those requesting a direct payment fully understand this and that it involves them making their own arrangements to obtain their care and support, with assistance if necessary. Where appropriate, individuals **must** be made aware that they can receive a direct payment where they manage only part of it, or none of it, where a representative would manage the remainder or all of the direct payment on their behalf.

In discussions about how needs might be met through a direct payment, local authorities **must** be prepared to be open to new ideas and be as flexible as possible. By exploring innovative and creative options, people **must** be encouraged to identify how they might most effectively achieve outcomes in a way that aligns with their personal preferences.

Ability to Manage

Local authorities **must** work with people to establish whether they are able to manage all aspects of a direct payment. Open, honest and frank discussions with the individual **must** take place to identify any aspects of the direct payment they may find difficult to manage.

Where areas of difficulty are identified, local authorities **must** ensure support to overcome this is available. Individuals **must** not be refused a direct payment purely because they are unable, or unwilling, to manage all aspect of a direct payment. Local authorities, in partnership with the person, **must** explore all options for supporting an individual to manage a direct payment.

Capacity to Consent - Appointing a Suitable Person

Direct Payments can be made to a willing and appropriate “suitable person” who receives and manages a direct payment on behalf of a person who lacks capacity as defined under the Mental Capacity Act 2005. If a person lacks capacity, and a suitable person is willing to receive a direct payment on their behalf, the suitable person **must** be capable of managing the direct payment either on their own or with support. Provided that the suitable person is able to manage the direct payment, either with or without support, and is considered to have the individual’s best interests at heart, the local authority **must** provide the direct payment to that suitable person.

In most instances the suitable person will be a close friend or family member involved in the care and support of the individual. Whatever the relationship a local authority **must** ensure that the best interests of the person lacking capacity are prioritised above all other considerations. Priority in respect of “suitable persons” **must** be given to the following:

- someone who has been awarded Lasting Power of Attorney (LPA) but not just a financial LPA on its own;
- someone who has been appointed a deputy for the person needing support by the Court of Protection under section 16 of the Mental Capacity Act 2005;
- someone who offers to act as a suitable person which the local authority considers is acting in the best interests of the person lacking capacity;
- someone who the local authority themselves agree is suitable to act as a suitable person;
- someone employed by an organisation or third party appointed by a local authority to act as a suitable person.

A local authority **must** be satisfied that a direct payment recipient's needs, and personal well-being outcomes, can be met via a direct payment involving a suitable person before putting that direct payment in place. The authority **must** be satisfied that the relevant suitable person is capable of managing all aspects of the direct payment or if that is not the case, that they can do so with appropriate support.

The suitable person **must** understand what is involved in managing a direct payment. Local authorities **must** provide or arrange the provision of as early in the process as possible, information and support about what receiving a direct payment will involve. Local authorities **must** ensure suitable persons fully understand this and that it involves them making the arrangements to obtain the care and support for the individual they act for in that person's best interests, with assistance if necessary.

Making Payments

A local authority **must** be satisfied before it begins to make payments the recipient, or their representative, understands all of the conditions they will be required to meet. The local authority **must** also discuss the circumstances in which it might wish to consider seeking repayment if circumstances change, to ensure these are known from the outset.

Local authorities **must** work in partnership with direct payment recipients, or their representative, to agree how frequent their direct payment should be made. Recipients, or their representatives, must be in a position to pay for care and support or to pay wages of staff employed when payments are due. The arrangements to pay direct payments **must** be reliable therefore, as late or incorrect payments may put at risk recipients' ability to obtain the care and support they need. Local authorities **must** put in place payment arrangements that are appropriate in each case and make sure recipients are clear before the direct payment begins as to the arrangements that are applicable in their case.

Local authorities **must** also have arrangements in place for making additional payments in emergencies, with recipients or their representatives clear as the procedures for obtaining additional payments in an emergency.

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

Addressing Risks

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

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

Health and Safety

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

As part of this local authorities **must** share with recipients, or their representatives, the results of any risk assessments carried out as part of their care and support assessment. This allows the individual to share this assessment with any provider or employee from which it obtains its care and support.

Direct Payment Recipients as Employers

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

Local authorities can provide a direct payment to meet a person's care and support needs where it involves the employment of a close relative to provide that care and support. In such cases the local authority **must** be satisfied that in the particular circumstances of that individual, the employment of a close relation is appropriate in that case.

Financial Monitoring

Local authorities **must** ensure their financial monitoring arrangements for direct payments are proportionate. Financial or monitoring reports which recipients, or their representatives, are asked to complete **must** be easy to understand and be the least bureaucratic for them to comply with while still fulfilling an authorities' overall financial responsibilities.

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

The auditing of accounts must take into consideration the flexibility direct payment recipients have when obtaining their care and support, with potentially fluctuating weekly expenditure. Sufficient funds **must** remain in a recipient's direct payment account in order for them to meet their care and support needs and any employment commitments.

When Difficulties Arise

Where a local authority is concerned an individual who wishes to receive a direct payment may not be capable of managing the payment, even with support, it **must** ensure it takes into account, and subsequently records, all relevant factors before making a final decision not to provide a direct payment. Local authorities **must** only make a direct payment where it is satisfied the individual is capable of managing the payment, by themselves or with assistance. Where a local authority makes a judgement that someone is unable to manage a direct payment even with support, this **must** be made on an individual basis, taking into account the views of the individual and the help that may be available to them.

Local authorities **must** not make blanket assumptions whole groups of people will or will not be capable of managing direct payments. If a local authority concludes that an individual is not, even with assistance, able to manage a direct payment, it **must** discuss with them (and with any family, friends or representatives, as appropriate) the reasons for coming to such a conclusion. Where an individual, or their representative, does not agree with the authority's judgement they retain their **right** to access the local authority's complaints procedures.

If a direct payment recipient is unable to use their direct payment, local authorities **must** find out from them, or their representative, why this is the case and in partnership with them, agree how this can be corrected. This could include providing the direct payment to a representative, or a different representative than present, to receive and manage the direct payment on that individual's behalf (either on a temporary or permanent basis), where that representative is willing to do so.

When to Seek Repayment

Local authorities are able to require some or all of the money they have paid via a direct payment to be repaid if they are satisfied it has not been used to secure the care and support a recipient required and their well-being outcomes not achieved. They may also require repayment if the individual has not met any condition the local authority originally attached to the provision of the direct payment.

Local authorities **must** assess when it is appropriate to seek recovery on a case by case basis, based on the individual circumstances. They **must** not operate a blanket policy of recovery that does not take into account the individual circumstances. Repayment **must** be aimed at recovering money that has been diverted from the purpose for which it was intended, or has simply not been spent at all. It **must** not be used to penalise honest mistakes, nor should repayment be sought where the individual has been the victim of fraud.

Local authorities **must** take hardship considerations into account in deciding whether to seek repayments. Local authorities **must** bear in mind there might be legitimate reasons for unspent funds, such as outstanding legal liabilities necessitating an individual to build up an apparent surplus (eg periodic employment payments for tax or national insurance purposes, or to pay periodically for care and support provision).

Discontinuation of Direct Payments

Prior to discontinuing a direct payment local authorities **must** explore all options to continue to meet a recipient's care and support needs through the direct payment if possible. Only where it is not possible to achieve this should the discontinuation of the direct payment take place.

A local authority **must** stop making a direct payment where it is satisfied that the recipient's care and support needs, or their well-being outcomes, are not being met and it is not possible to amend the provision of the direct payment to do so.

A direct payment recipient, or their representative, may at any time voluntarily decide to terminate their direct payment. If a local authority decides to withdraw a direct payment, or it is voluntarily terminated, and the recipient still has care and supports needs which an authority would otherwise meet, it **must** arrange for these to be met through alternative arrangements. If a direct payment is discontinued some recipients may find themselves with ongoing contractual responsibilities, by having to terminate care and support contracts or terminating employees' contracts. Local authorities **must** make recipients aware of the potential consequences if direct payments end.

Local authorities **must** discontinue a direct payment in the event of the recipient's death. They should secure the name of an executor or next of kin to ensure the closure of the direct payment account and to make payment for any outstanding responsibilities.

Other relevant Guidance, Codes of Practice and Additional Information