

# Eligibility for care and support

## National minimum eligibility threshold - what it means for carers and the people they care for.

### Summary

The Care Act 2014 creates a national minimum eligibility threshold across England. Where an adult's or carer's needs reach this threshold, the local authority must consider how these needs can be met and, depending on their financial means, the local authority may be under a duty to provide services to meet these eligible needs. By creating a new national minimum threshold the Act aims to ensure that there is clarity and consistency around local authority determinations on eligibility.

The Care Act 2014 also contains, for the first time, a duty on local authorities to meet a carer's needs for support which reach a set threshold. This threshold, known as the eligibility threshold, already exists for adults with care needs. Carer UK has campaigned for the thresholds to be as low as possible.

This threshold will apply from April 2015. The criteria which a carer or adult with care needs must meet in order to reach the threshold are set out in regulations which accompany the Care Act. Statutory guidance, which has the force of law, provides more detail on how this works in practice. This briefing looks at what the regulations and guidance say and what this means for carers.

Local authorities are considering what this means for them locally and will have to update their practice in line with the new law. Carers UK is updating our advice for carers in line with the regulations and guidance and will be producing new resources including updated web content and factsheets.

### How is the eligibility system changing?

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At the moment local authorities make decisions about whether to provide social care services to adults with care needs by looking at the needs they have identified at the assessment stage against a set of bands which rank eligible needs in terms of risks to

the individual's independence and wellbeing, and the consequences of their needs not being met.

This system of bands at low, moderate, substantial and critical risk is known as Fair Access to Care Services (FACS). Local authorities set their own policies on what band they will provide care at. For some local authorities those with only critical needs will receive social care but in the majority only those with substantial needs will qualify for support. A few local authorities continue to meet moderate needs for care.

Currently policy guidance also includes an equivalent of the FACS for carers though this is not enforceable in the same way as there is no legal duty, only a power, to provide a service to a carer. The guidance looks at the risk to the carer's ability to sustain the caring role.

The Care Act replaces the FACS system and its local variation with a nationally set threshold for adults and a nationally set threshold for carers which for the first time is legally enforceable.

## **At what level is the threshold being set?**

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The Government's intention in describing the national threshold is to reflect the level of needs which most local authorities are currently meeting. As a result, the national minimum eligibility threshold set out in the regulations is designed to be comparable with the substantial threshold currently in use. However, local authorities will continue to have the ability and discretion to set their local threshold at a lower level. They may be more but not less generous than the minimum threshold.

Carers UK has campaigned along with others for the national threshold to reflect the current moderate threshold. We have argued that by waiting until needs have reached a significant or substantial threshold before care and support must be provided, early action which could have slowed or prevented deterioration in a person's circumstances is less likely to take place.

As the regulations setting the threshold could be changed without a new Act of Parliament, Carers UK will continue to call for level of social care funding to be increased so local authorities can meet lower levels of need.

## **What care needs will be eligible?**

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An adult has care and support needs that meet the eligibility threshold if they meet all three of the following conditions:

**Firstly:**

The adult's needs arise from or are related to a physical or mental impairment or illness.

**Secondly:**

As a result of the adult's needs the adult is unable to achieve **two or more** of the specified outcomes. These are set out in the statutory guidance as:

**Managing and maintaining nutrition**

Local authorities should consider whether the adult has access to food and drink to maintain nutrition, and that the adult is able to prepare and consume the food and drink.

**Maintaining personal hygiene**

Local authorities should, for example, consider the adult's ability to wash themselves and launder their clothes.

**Managing toilet needs**

Local authorities should consider the adult's ability to access and use a toilet and manage their toilet needs.

**Being appropriately clothed**

Local authorities should consider the adult's ability to dress themselves and to be appropriately dressed, for instance in relation to the weather to maintain their health.

**Being able to make use of the home safely**

Local authorities should consider the adult's ability to move around the home safely, which could for example include getting up steps, using kitchen facilities or accessing the bathroom. This should also include the immediate environment around the home such as access to the property, for example steps leading up to the home.

**Maintaining a habitable home environment**

Local authorities should consider whether the condition of the adult's home is sufficiently clean and maintained to be safe. A habitable home is safe and has essential amenities. An adult may require support to sustain their occupancy of the home and to maintain amenities, such as water, electricity and gas.

**Developing and maintaining family or other personal relationships**

Local authorities should consider whether the adult is lonely or isolated, either because their needs prevent them from maintaining the personal relationships they have or because their needs prevent them from developing new relationships.

**Accessing and engaging in work, training, education or volunteering**

Local authorities should consider whether the adult has an opportunity to apply themselves and contribute to society through work, training, education or volunteering, subject to their own wishes in this regard. This includes the physical access to any facility and support with the participation in the relevant activity.

### **Making use of necessary facilities or services in the local community including public transport and recreational facilities or services**

Local authorities should consider the adult's ability to get around in the community safely and consider their ability to use such facilities as public transport, shops or recreational facilities when considering the impact on their wellbeing. Local authorities do not have responsibility for the provision of NHS services such as patient transport, however they should consider needs for support when the adult is attending healthcare appointments.

### **Carrying out any caring responsibilities the adult has for a child**

Local authorities should consider any parenting or other caring responsibilities the person has. The adult may for example be a step-parent with caring responsibilities for their spouse's children.

### **Thirdly:**

As a consequence of being unable to achieve these outcomes there is, or there is likely to be, a **significant** impact on the adult's wellbeing.

An adult is regarded as being unable to achieve an outcome if the adult:

- is unable to achieve it without assistance;
- is able to achieve it without assistance but doing so causes the adult significant pain, distress or anxiety;
- is able to achieve it without assistance but doing so endangers or is likely to endanger the health or safety of the adult, or of others; or
- is able to achieve it without assistance but takes significantly longer than would normally be expected.

## **What does eligibility look like for carers?**

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It is important to remember that carers can be eligible for support even if the person that they care for does not have eligible needs and regardless of whether the person they care for is eligible or not a local authority may meet a carer's eligible need for support by providing a service to the adult that they care for.

The eligibility regulation sets out the criteria, which a carer must meet if their needs for support are regarded, as eligible. By looking at the outcomes which a carer wishes to achieve and how these outcomes impact on the carer's well-being, the new eligibility system aims to be person centred and to consider a carer's wishes and priorities. A carer has support needs that meet the eligibility threshold if they meet **all three** of the following conditions:

### **Firstly:**

Their needs for support must arise as a consequence of providing necessary care for an adult

## **Secondly:**

Authorities must consider is **whether the carer's physical or mental health is either deteriorating** or is at risk of doing so, **or whether the carer is unable to achieve any one** of a list of other outcomes which may apply. These are set out in the statutory guidance as:

**Carrying out any caring responsibilities the carer has for a child** Local authorities should consider any parenting or other caring responsibilities the carer has for a child in addition to their caring role for the adult. For example, the carer might be a grandparent with caring responsibilities for their grandchildren while the grandchildren's parents are at work.

### **Providing care to other persons for whom the carer provides care**

Local authorities should consider any additional caring responsibilities the carer may have for other adults. For example, a carer may also have caring responsibilities for a parent in addition to caring for the adult with care and support needs.

### **Maintaining a habitable home environment**

Local authorities should consider whether the condition of the carer's home is safe and an appropriate environment to live in and whether it presents a significant risk to the carer's wellbeing. A habitable home should be safe and have essential amenities such as water, electricity and gas.

### **Managing and maintaining nutrition**

Local authorities should consider whether the carer has the time to do essential shopping and to prepare meals for themselves and their family.

### **Developing and maintaining family or other significant personal relationships**

Local authorities should consider whether the carer is in a position where their caring role prevents them from maintaining key relationships with family and friends or from developing new relationships where the carer does not already have other personal relationships.

### **Engaging in work, training, education or volunteering**

Local authorities should consider whether the carer can continue in their job, and contribute to society, apply themselves in education, volunteer to support civil society or have the opportunity to get a job, if they are not in employment.

### **Making use of necessary facilities or services in the local community**

Local authorities should consider whether the carer has an opportunity to make use of the local community's services and facilities and for example consider whether the carer has time to use recreational facilities such as gyms or swimming pools.

### **Engaging in recreational activities**

Local authorities should consider whether the carer has leisure time, which might for example be some free time to read or engage in a hobby.

**Thirdly:**

As a consequence, there is or is likely to be, a **significant** impact on the carer's wellbeing.

## What does it mean to be 'unable' to achieve an outcome?

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The regulations and guidance explain what it means for a carer to be considered 'unable' to achieve an outcome:

**Is unable to achieve the outcome without assistance.** A carer might, for example, be unable to fulfill their parental responsibilities unless they receive support in their caring role.

**Is able to achieve the outcome without assistance, but doing so causes or is likely to cause significant pain, distress or anxiety or endangers.** A carer might for example be able to care for the adult and undertake fulltime employment, but if doing both, this causes the carer significant distress, the carer should not be considered able to engage in employment.

**Is able to achieve the outcome without assistance but doing so is likely to endanger the health or safety of the carer or any adults or children for whom the carer provides care.**

## What happens if someone's needs are not eligible?

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Whether or not someone is eligible for care and support, the local authority must consider what information and advice and what preventative services might be available.

Preventative services are universal services that local authorities must make available to their whole population though what is or is not available is up to the local authority to decide. A local authority is also able to decide to charge for those services and they are not under a duty to provide them to individuals just to have some available.

The kinds of preventative services, which might be available to carers without eligible needs, might include relaxation classes or some tele-care services for the person they care for. In some areas Carers UK's care co-ordination app, Jointly, is being provided as a preventative service to help carers manage.

## **What happens when a person has eligible needs?**

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If the adult has some eligible needs, the local authority must:

**Agree which of their needs they would like the local authority to meet.** The person may not wish to have support in relation to all their needs – they may, for example, intend to arrange alternative services themselves to meet some needs.

**Consider how the local authority may meet those needs** in order to determine whether some of those may be services for which the local authority makes a charge. Where that is the case, the local authority must carry out a financial assessment.

**Establish whether the person meets the ordinary residence requirement.** This applies differently for adults with care and support needs and for carers. In the case of the adult, they must be ordinarily resident in the authority's area. In the case of the carer, the person that they care for must be ordinarily resident in that authority's area.

## **Who is entitled to have their needs met by the local authority?**

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A person will be entitled to have their eligible needs met when they are “ordinarily resident” in the local area or in the case of a carer the person they care for is “ordinarily resident”.

**And any of the following situations apply to them.**

- the type of care and support they need is provided free of charge;
- the person cannot afford to pay the full cost of their care and support;
- the person asks the local authority to meet their needs for non-residential care
- the person does not have mental capacity, and has no one else to arrange care for them;

## **Further changes to local authority duties from 2016**

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From 2016 a capped cost system will be in operation and those who are able to fund the entire costs of their care and support may want to establish their eligibility in order to begin to contribute to their care account.

Once the cap is in force some people who are able to fund their care will become entitled to local authority funded care once their total care and support costs have exceeded the cap.

From 2016 the local authorities will also have a duty to arrange residential care for someone who is able to fund the full costs of their own care if they request that the local authority does so. Between 2015 and 2016 this duty to arrange care on request only applies to non-residential care.

## **Contact us**

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