

Accessing social care and health care services in Wales

Mencap WISE Student Advice Project

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INTRODUCTION

The process of accessing social care and health care services can be complex. Both social care and health care are dealt with under different legislation, and it is not uncommon for local authorities and health boards to disagree about which organisation is responsible for providing services.

The purpose of this toolkit is to assist people who are acting as learning disability advocates (be that parent, carer, volunteer or professional) by explaining individual entitlements to social and health care services. The toolkit explains the duties of local authorities and health boards in Wales to provide services and how those services are accessed, as well as providing information regarding charging for services and challenging decisions. The toolkit is divided into three Parts:

Part 1 – Social care services: the duties and obligations of local authorities

This Part explains the duties and obligations that local authorities have to assess individuals and provide care and support. Local authorities may not be obliged to meet all/any of a person's needs, and Part 1 explains how a local authority determines whether a person is eligible to receive services and provides an overview of the key services that are usually available from local authorities. Consideration is also given to when local authorities can charge for the services provided, and how any charges are calculated. Information is also provided regarding the duties which local authorities have to undertake assessments of carers, and to provide carers with support.

Part 2 – Health care services: the duties and obligations of local health boards

This Part explains the duties and obligations that local health boards have to provide health care services, including community-based services. Information is also provided about assessing mental capacity, and when people can be deprived of their liberty.

Part 3 – Challenging Decisions

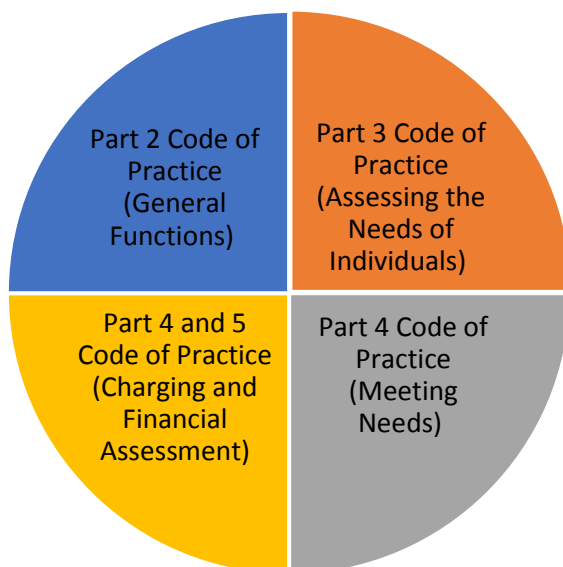
This Part explains how decisions about social care and health care services can be challenged.

The toolkit includes hyperlinks to key online resources. Wherever a reference is underlined in the text, it indicates that it is a hyperlink, which will take you to the relevant external resource. In addition, the toolkit contains an **Additional Resources** section, which contains details of organisations providing information relating to social and health care provision.

The key legislation relating to social care and health care in Wales is:

- [Social Services and Well-being \(Wales\) Act 2014](#); and
- [National Health Service \(Wales\) Act 2006](#).

The Welsh Government has also issued a series of [Codes of Practice](#) relating to social care. Where the Codes refer to **requirements**, these must be followed by local authorities. Where the Codes refer to **guidelines**, local authorities must have regard to the relevant guideline. The key Codes are:



The relevant legislation and Codes of Practice are referenced throughout this toolkit.

PART 1 – SOCIAL CARE SERVICES: THE DUTIES AND OBLIGATIONS OF LOCAL AUTHORITIES

Local government is undertaken by local authorities, and a local authority has responsibilities towards both adults and children living in its area. This Part will focus on the duties and obligations that local authorities have to assess individuals and to provide care and support, usually referred to as ‘social care’ services. Local authorities do not have any duties to treat, and accessing health care provision is considered in **Part 2 – Health care services: the duties and obligations of local health boards**.

The information in this Part of the toolkit covers:

- 1.1 The Social Services and Well-being (Wales) Act 2014: Key Duties**
- 1.2 The duty to assess**
- 1.3 Obtaining an assessment**
- 1.4 How long should an assessment take?**
- 1.5 The assessment process**
- 1.6 The National Assessment and Eligibility Tool**
- 1.7 What needs does a local authority have to meet?**
- 1.8 What services does a local authority have to provide?**
- 1.9 Can the local authority charge for care and support services?**
- 1.10 Who has to pay for care and support services?**
- 1.11 The financial assessment process**
- 1.12 Can the local authority withdraw services?**

1.1 The Social Services and Well-being (Wales) Act 2014: Key Duties

The Social Services and Well-being (Wales) Act 2014 (SSWBA 2014), came into force on 6th April 2016. The Act only applies in Wales, and this means that social care law in Wales is different from the law that applies in England. The Act places well-being at the centre of the social care system. Under **s5 SSWBA 2014**, local authorities must promote the **well-being** of:

- people who need care and support; and
- carers who need support.

The duty under s5 is sometimes referred to as the *general overarching duty*, as it reflects the general obligation that local authorities are under to promote well-being. Whereas the focus of the law in England is mainly adults in need, the general duty under the SSWBA 2014 applies to individuals of any age.



Key Information and Resources: What is well-being?

Well-being is defined in s2 SSWBA 2014 and means any of the following:

- ❖ physical and mental health and emotional well-being;
- ❖ protection from abuse and neglect;
- ❖ education, training and recreation;
- ❖ domestic, family and personal relationships;
- ❖ contribution made to society;
- ❖ securing rights and entitlements;
- ❖ social and economic well-being; and
- ❖ suitability of living accommodation.

For an *adult*, well-being also includes:

- ❖ control over day to day life; and
- ❖ participation in work.

For a *child*, well-being also includes:

- ❖ physical, intellectual, emotional, social and behavioural development; and
- ❖ ‘welfare’ as referred to in the Children Act 1989.

Information about what these concepts actually mean in practice can be found in the Part 2 Code of Practice (General Functions) (paragraph 31). For example, living accommodation will be suitable if it allows an individual to say “*I live in a home that best supports me to achieve my well-being*”.

As well as the general duty to promote well-being, **s6 SSWBA 2014** sets out a number of *other overarching duties*. Under s6, local authorities must:

- find out and have regard to the individual's views, wishes and feelings (in so far as is reasonably practicable);
- have regard to the importance of promoting and respecting the dignity of the individual;
- have regard to the characteristics, culture and beliefs of the individual (including language); and
- have regard to the importance of providing appropriate support to enable the individual to participate in decisions that affect them to the extent that is appropriate in the circumstances, particularly where the individual's ability to communicate is limited for any reason.

For an *adult*, local authorities must also:

- begin with the presumption that the adult is best placed to judge their well-being; and
- promote the adult's independence where possible.

For a *child*, local authorities must also:

- have regard to the importance of promoting the upbringing of the child by the child's family, in so far as it is consistent with the well-being of the child; and
- where the child is under the age of 16, ascertain and have regard to the views, wishes and feelings of the people with parental responsibility for the child, in so far as doing so is: (i) consistent with promoting the well-being of the child, and (ii) reasonably practicable.

Several of these duties require the local authority to '*have regard*' to a particular factor. The [Part 2 Code of Practice \(General Functions\)](#) (paragraph 59) discusses what 'have regard' means, and notes that local authorities must be able to demonstrate that they have processes in place which allow them to show that they have obtained and considered the relevant information. For example, there must be appropriate training available to ensure

that staff undertaking assessments can communicate appropriately with someone who has a disability in order to ascertain the person's views, wishes and feelings.

Section 7 SSWBA 2014 states that when a local authority exercises any of the overarching duties, it must have due regard for:

- The United Nations Principles for Older Persons; and
- The United Nations Convention on the Rights of the Child.

In addition, the Part 2 Code (paragraph 56) states that *“well-being includes key aspects of independent living, as expressed in the UN Convention on the Rights of Disabled People, in particular, Article 19 of the Convention”*.

If you are supporting an older person or a child, or someone with a disability, then it is important to consider whether the particular rights that they have under these conventions have been properly considered by the local authority. For example, one of the rights set out in Article 19 of the Convention on the Rights of Disabled People states that *“persons with disabilities have the opportunity to choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in a particular living arrangement”*. The **Additional Resources** section has links to sources of information about each of the conventions.

If a local authority fails to comply with any of its duties under s5 and s6 SSWBA 2014, or fails to properly consider an individual's rights under one of the conventions, then it will be possible to make a complaint to the local authority (see [Complaints Procedure](#)).

1.2 The duty to assess

As local authorities must promote the well-being of people who need care and support, and carers who need support, this means that three different assessment duties exist:

- **Adults** (any person aged 18 or over - s3(2) SSWBA 2014).
- **Children** (any person aged under 18 - s3(3) SSWBA 2014).
- **Carers** (any person who provides, or intends to provide, care for an adult or disabled child other than a paid carer or voluntary worker - s3(4) and (7) SSWBA 2014).

Detailed information about how the duty assess must be applied can be found in the [Part 3 Code of Practice \(Assessing the needs of individuals\)](#).

The duty to assess **adults** is set out in **s19 SSWBA 2014**, and requires that the local authority must assess whether an adult has care and support needs if:

- the person is living (or usually resident) in the local authority area; and
- it appears that the person may have needs for care and support.

The duty to assess an adult applies regardless of both the person's financial means and any view that the local authority may have of the person's needs for care and support. This means that a local authority cannot refuse to carry out an assessment on the basis that it appears unlikely that the person will qualify for services, or because it appears that they person is able to pay for services. Similarly, the local authority cannot refuse to conduct an assessment on the basis that the person's needs are being met by care provided by family or other carers.

The duty to assess **children** is set out in **s21 SSWBA 2014**, and requires that the local authority must assess whether a child needs care and support in addition to, or instead of, the care and support provided by the child's family if:

- the child is living (or usually resident) in the local authority area; and
- it appears that the child may have needs for care and support in addition to, or instead of, the care and support provided by the child's family.

As with adults, the duty to assess children applies regardless of both the financial means of the child (or any person with parental responsibility for the child), and any view that the local authority may have of the child's needs for care and support. (Where a child is looked after by the local authority, different duties exist and these are considered in the separate [Child Protection](#) toolkit.)



Key Information and Resources:
Disabled children.

Where a child is disabled, **s21(7) SSWBA 2014** states that they will be “*presumed to need care and support in addition to, or instead of, the care and support provided by the child’s family*”.

Under **s3(5) SSWBA 2014**, a person is disabled if the person has a disability for the purposes of the Equality Act 2010. This means that a person will be regarded as being disabled if they have physical or mental impairment, which has a substantial and long-term adverse effect on the person’s ability to carry out normal day-to-day activities.

The duty to assess **carers** is set out in **s24 SSWBA 2014**, and requires that the local authority must assess whether a carer has support needs (or is likely to do so in the future) if:

- the carer is providing, or is intending to provide, care for an adult or a disabled child who is living (or usually resident) in the local authority area; and
- it appears that the carer may have needs for support.

Again, the duty to assess applies regardless of both the financial means of the carer and any view that the local authority may have of the carer’s needs for support. The Part 3 Code (paragraph 15) notes that where the carer is under 18, they may also be a child with needs for care and support and so might be entitled to a separate assessment under s21 SSWBA 2014.

Usually, a local authority is only required to provide services where the person is living or usually resident in the local authority area. Prior to the introduction of the SSWBA 2014, the test was whether someone was ‘ordinarily resident’ in the local authority area. The meaning of ordinary residence was considered by the House of Lords in ***R v Barnet London Borough Council ex parte Shah* [1983] 1 All ER 226**, and it was decided that

ordinary residence is established if:

- there is a regular, habitual mode of life in a particular place;
- whether of short or long duration;
- which is voluntary and for a settled purpose.

It is likely that the same approach will be taken to deciding any disputes about whether a person is living or usually resident in a local authority area under the SSWBA 2014.

1.3 Obtaining an assessment

Assessment is the gateway to social care services. Section 17 SSWBA 2014 requires local authorities to provide an information, advice and assistance service to enable people to access care and support. Therefore, services should be available in your local area to support you in obtaining an assessment of care and support needs. (The function of the information, advice and assistance service is explained in detail in the separate [Advocacy and Access to Information, Advice and Assistance](#) toolkit.)

Alternatively, you can request an assessment, either for someone you are supporting, or for yourself if you are a carer, by contacting the local authority adult social care or children's services department. You should be able to obtain the relevant contact details from the local authority's website.



Key Information and Resources: How to request an assessment.

If you need to request an assessment for social care services, you may find the following resources useful:

- ❖ The Westminster Government provides an online search engine ([Find your local council](#)) that allows you to identify the local authority, which is responsible for a particular area, by entering a postcode.
- ❖ Cerebra produces a series of free [Template Letters](#) to support people contacting local authorities to request a range of service provision. The templates include letters relating to social care provision in both England and Wales.

As the assessment duties in respect of adults, children and carers are all mandatory, this means that local authorities must carry out an assessment if it appears to the local authority that the person may have care and/or support needs. The local authority can normally only be released from the obligation to carry out an assessment if there is a valid refusal to be assessed.

Where the person being assessed is an adult, they are entitled to refuse to participate in an assessment. If the adult lacks capacity, then a valid refusal can be given by a person authorised under the Mental Capacity Act 2005. (For further information about capacity issues see [Mental capacity and mental health issues](#).) Where a valid refusal is given, the local authority does not have to carry out an assessment, unless the local authority suspects that the adult is experiencing, or is at risk of, abuse or neglect. Where the adult lacks capacity, and there is no authorised person to act on the adult's behalf, the local authority should carry out an assessment, even if the adult refuses, in all cases where the local authority believes that the assessment is in the adult's best interests.

Where the person being assessed is a child, they are entitled to refuse to participate in an assessment if they are aged 16 or 17. If a child aged 16 or 17 lacks capacity, then a valid refusal can be given by a person authorised under the Mental Capacity Act 2005 or, if there is no authorised person, by someone with parental responsibility for the child

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(provided that person has capacity). Where the person being assessed is a child aged under 16, the local authority must assess whether they have sufficient understanding to make an informed decision about whether to refuse an assessment. If the child is deemed to have sufficient understanding they can refuse the assessment. If the child does not have sufficient understanding, then the decision will be made by a person with parental responsibility for the child. In situations where the child appears to have sufficient understanding, and wishes the assessment to be carried out, but a person with parental responsibility refuses to agree to the assessment, then local authority should proceed with the assessment. In any case where the person being assessed is a child, if a valid refusal is given, the local authority does not have to carry out an assessment unless either the refusal was given by someone with parental responsibility and the local authority believes that not having the assessment would not be in the child's best interests; or the local authority suspects that the child is experiencing, or is at risk of, abuse or neglect.

Where the person being assessed is a carer aged 16 or over, they are entitled to refuse to participate in an assessment. Where the carer is aged under 16, then the local authority must assess whether they have sufficient understanding to make an informed decision about whether to refuse an assessment. If a young carer does not have sufficient understanding, then the decision will be made by a person with parental responsibility for the carer.

In all cases, if the person refusing the assessment changes their mind, then the local authority must carry out an assessment.

1.4 How long should an assessment take?

As people have different needs, the legislation recognises that different types of assessments will be required, with some people requiring an assessment from a single practitioner and others needing more complex assessments with specialist input. Therefore, the legislation does not generally set timescales during which assessments should be completed, although the [Part 3 Code of Practice \(Assessing the needs of individuals\)](#) (paragraph 36) notes that the people involved “*should be kept informed of the progress of the assessment and expected timescales for completion of the assessment process*”. The one exception is that the Part 3 Code (paragraph 78) states that where the referral relates to a child the assessment must be completed in no more than 42 days from the point of referral.

Prior to the introduction of the SSWBA 2014, needs assessments had to be conducted within a ‘reasonable time’. Previous guidance from the Ombudsman suggested that most assessments should be completed within 4 – 6 weeks, and straightforward assessments should be completed more quickly. It is likely that this approach will continue to be taken by the Ombudsman under the SSWBA 2014. If the local authority says that it cannot complete an assessment within a reasonable time period (e.g. because it has a waiting list), then it is possible to make a complaint on the basis that the local authority is not providing sufficient resources to comply with its duty to provide assessments within a reasonable time. In addition, the Part 3 Code (paragraph 32) notes that the need for a specialist assessment should not delay “*appropriate services being provided*”. Similarly, paragraph 52 notes that an assessment can be requested through the medium of English or Welsh, and “*the requirement for an assessment to be in the medium of Welsh should not delay the process*”.

1.5 The assessment process

The [Part 3 Code of Practice \(Assessing the needs of individuals\)](#) sets out the principles that local authorities should apply when undertaking an assessment of care and support needs.

The Part 3 Code (paragraph 23) notes that the individual being assessed “*must feel that they are an equal partner in their relationship with professionals*”. An individual being assessed is entitled to be supported through the process, and this support can be informal (e.g. from a family member) or formal (e.g. via an independent professional advocate). (More information about the right to advocacy support can be found in the separate [Advocacy and Access to Information, Advice and Assistance](#) toolkit.)

If the person being assessed needs specialist input then the local authority must ensure that the assessment includes the specialist skills, knowledge or expertise required (Part 3 Code (paragraph 30)).

There must be a *designated lead practitioner* to co-ordinate the assessment process (Part 3 Code (paragraph 41)). For straightforward assessments, the lead practitioner is likely to complete the assessment alone, but where the individual has more complex needs the lead practitioner will be responsible for co-ordinating the assessment process and collating

input from other professionals working with the individual. The Part 3 Code (paragraph 43) notes that the lead practitioner will usually be a qualified social work/care practitioner, and, unless the individual being assessed objects, the lead practitioner will usually involve the following people in the assessment:

- anyone whom the person being assessed (or parent in the case of a child) asks to be involved in the assessment;
- other professionals who have undertaken or will need to undertake a related assessment;
- other professionals with expertise relating to the needs of the person being assessed;
- in the case of an adult who lacks the capacity, any person authorised to make decisions under the Mental Capacity Act 2005;
- any other person, including carers, whom the local authority considers to have sufficient involvement in the care or support arrangements for the person.

Where both an individual and their carer are being assessed, it is possible to undertake a combined assessment if it would be beneficial to do so and everyone being assessed agrees (Part 3 Code paragraph 37).

1.6 The National Assessment and Eligibility Tool

The [Part 3 Code of Practice \(Assessing the needs of individuals\)](#) (paragraph 54) notes that any assessment of care and support needs must be undertaken in accordance with the National Assessment and Eligibility Tool, which requires the following:

- completion of the national minimum core data set;
- an analysis of the five key elements of assessment;
- a list of actions to be taken to enable the person to achieve their personal outcomes and ensure their care and support needs are met; and
- a statement explaining how the proposed action will enable the person to achieve their personal outcomes or otherwise meets the needs identified.



Key Information and Resources:

What is the national minimum core data set?

The Part 3 Code (paragraph 59) sets out the information required to complete the national minimum core data set:

NHS Number	Preferred Language/Communication method/Accessibility requirement
Title	Name(s) of Carer(s) / People with parental responsibility
Surname	Relationship
Forename(s)	Contact Details for Carer(s)/People with parental responsibility
Preferred Name	Is this a child on the Child Protection Register?
Address and Postcode	Contact details of Lead Assessment Co-ordinator
Date of Birth	Contact details of Lead Care Coordinator
Telephone	Information taken by (name)
Email Address	Designation
Sex	Organisation
GP Name and address	Date
School name and address	
Occupation	
What other assessments have been undertaken by other agencies?	

In addition to obtaining the information required as part of the core data set, the assessment process requires a comprehensive analysis of the five key elements of assessment to be undertaken. The five key elements are set out in The Care and Support (Assessment) (Wales) Regulations 2015 with regulation 4 noting that a local authority must:

- assess and have regard to the person's circumstances;
- have regard to their personal outcomes;
- assess and have regard to any barriers to achieving those outcomes;
- assess and have regard to any risks to the person or to other persons if those outcomes are not achieved; and
- assess and have regard to the person's strengths and capabilities.

The Part 3 Code (Annex 1) contains guidance regarding the assessment of the five key elements. The lead practitioner must ensure that assessment process focuses on gaining an understanding of the individual's personal well-being outcomes. The assessment should also identify any barriers to achieving those outcomes, taking into account the person's circumstances, strengths and capabilities, and any risks to the individual (or any other person) if the well-being outcomes are not achieved. Having identified the barriers that exist, the assessment should set out the actions required to enable the individual to overcome those barriers, and how the required actions are going to be implemented.

The Part 3 Code also sets out specific considerations that apply when the assessment is of an adult and when the assessment is of a child. Where the person being assessed is an adult, the assessment:

- begins from the presumption that an adult is best placed to judge their own well-being (*paragraphs 17 & 66*); and
- should promote the adult's independence where possible (*paragraph 67*).

Where the person being assessed is a child, the assessment:

- must provide for the child to be seen (*paragraphs 25 & 74*);
- should promote the upbringing of the child by the child's family, as far as that is consistent with the well-being of the child (*paragraph 72*);
- where the child is under 16, should ascertain the views, wishes and feelings of anyone with parental responsibility for the child (*paragraph 75*);
- must ensure that the child is safeguarded and their well-being is promoted (*paragraph 76*); and
- must be conducted in accordance with the 'Principles underpinning the assessment of children' (*paragraph 77 & Annex 2*).

The Part 3 Code (paragraph 80) also notes that any assessment must identify all of the person's needs, including needs being met by a carer. Any assessment must also establish whether there is reasonable cause to suspect that the person is experiencing, or is at risk of, abuse or neglect. If the assessment identifies a safeguarding issue, the local authority must investigate and take any necessary action to protect the person.

Where the person being assessed is a carer, s24 SSWBA 2014 requires the local authority to:

- involve the carer and, where feasible, the person receiving care in the assessment;
- assess the extent to which the carer is able, and will continue to be able, to provide care;
- assess the extent to which the carer is willing, and will continue to be willing, to provide care;
- where the carer is an adult, identify the outcomes that the carer wishes to achieve;
- where the carer is a child, identify both the outcomes that the carer wishes to achieve (having regard to their age and understanding), and the outcomes that any person with parental responsibility for the carer wishes to achieve in relation to the carer;
- assess the extent to which support, preventative services, information, advice and assistance, or other matters could contribute to the achievement of the identified outcomes.
- have regard to:
 - whether the carer works or wishes to do so;
 - whether the carer is participating in or wishes to participate in education, training or any leisure activity; and
 - where the carer is a child, the developmental needs of the child and whether it is appropriate for the child to provide the care (or any care) in light of those developmental needs.

When the assessment has been completed, the results of the assessment, including the actions identified and how those actions will enable the person to achieve their personal outcomes must be recorded. The Part 3 Code (paragraph 116) requires that a copy of the assessment must be offered to the person to whom it relates, and must be provided in ‘easy read’ or other format appropriate to the person’s needs.

It is possible that a person’s needs will change over time. The Part 3 Code (paragraph 94) notes that where there has been a change in the person’s identified personal outcomes, or a significant change in circumstances, the local authority must carry out a review of the assessment. In addition, paragraph 98 notes that a re-assessment can be requested at any time.

1.7 What needs does a local authority have to meet?

The [Part 3 Code of Practice \(Assessing the needs of individuals\)](#) (paragraph 118) notes that an assessment of care and support needs undertaken in accordance with the National Assessment and Eligibility Tool may reach a number of conclusions:

- there are no needs to be met;
- a more comprehensive assessment is required, which may include more specialist assessments;
- needs can be met through the provision of information, advice or assistance;
- needs can be met through the provision of preventative services;
- needs can be met, wholly or in part, by the individual themselves (with or without the assistance of others);
- other matters can contribute to the achievement of the personal outcomes, or otherwise meet the needs;
- needs can only be met through a care and support plan, or a support plan.

The assessment should identify all of the person's needs, and the identified needs are often referred to as **presenting needs**. However, local authorities are not under a duty to meet every need that a person has. The [Care and Support \(Eligibility\) \(Wales\) Regulations 2015](#) set out the eligibility criteria that apply in Wales, and only if those criteria are met will services be provided. Therefore, a local authority only has to provide services that meet a person's **eligible needs**. If a person has presenting needs, which do not meet the eligibility criteria, then the local authority does not have to provide support in relation to those needs. This means that some people will have **unmet needs** (i.e. needs in respect of which the local authority has no legal duty to provide services).

The [Part 4 Code of Practice \(Meeting Needs\)](#) (paragraph 27) notes the 'Eligibility Regulations' require local authorities to apply four 'conditions' when deciding whether an individual's needs meet the eligibility criteria for care and support services:

- **Condition 1** – the need must arise from one of the circumstances specified in the regulations.
- **Condition 2** – the need must relate to one of the outcomes specified in the regulations.

- **Condition 3** – the person must be unable to meet the need either alone, or with the care and support of others who are able and willing to provide it, or with the assistance of community services.
- **Condition 4** – the person must be unlikely to achieve at least one of their personal outcomes unless the local authority provides either care and support or direct payments.

The way in which the conditions are applied differs depending upon whether the person being assessed is an adult, a child or a carer, and the following Tables summarise the approach that local authorities are required to take:

Table (1): Person being assessed (Adult)

Condition 1	<p>The need must arise from one of the circumstances specified in the Regulations.</p> <p>Under Regulation 3 the relevant circumstances are:</p> <ul style="list-style-type: none"> • physical or mental ill-health; • age; • disability; • dependence on alcohol or drugs; or • other similar circumstances.
Condition 2	<p>The need must relate to one of the outcomes specified in the Regulations.</p> <p>Under Regulation 3 the relevant outcomes are:</p> <ul style="list-style-type: none"> • ability to carry out self-care or domestic routines; • ability to communicate; • 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; or • fulfilment of caring responsibilities for a child.
	<p><i>Under Regulation 1 “self-care” means tasks that a person carries out as part of daily life including:</i></p> <ul style="list-style-type: none"> • <i>eating and drinking;</i> • <i>maintaining personal hygiene;</i> • <i>getting up and getting dressed;</i> • <i>moving around the home;</i> • <i>preparing meals;</i> • <i>keeping the home clean, safe and hygienic.</i>
Condition 3	<p>The need is such that the adult is not able to meet that need either:</p> <ul style="list-style-type: none"> • alone; • with the care and support of others who are willing to provide that care and support; or • with the assistance of services in the community to which the adult has access. <p><i>Under Regulation 6 a person is to be regarded as unable to meet a need if doing so, alone or with the assistance of others, either:</i></p> <ul style="list-style-type: none"> • <i>causes significant pain, anxiety or distress to that person;</i>

	<ul style="list-style-type: none"> • <i>endangers or is likely to endanger the health or safety of that person or another person; or</i> • <i>takes that person significantly longer than would normally be expected.</i>
Condition 4	<p>The adult is unlikely to achieve one or more of the personal outcomes identified by the assessment of their care and support needs unless:</p> <ul style="list-style-type: none"> • 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.

Table (2): Person being assessed (Child)

Condition 1	<p>The need must arise from one of the circumstances specified in the Regulations.</p> <p>Under Regulation 4 the relevant circumstances are:</p> <ul style="list-style-type: none"> • physical or mental ill-health; • age; • disability; • dependence on alcohol or drugs; • other similar circumstances; or • the need is one that if unmet is likely to have an adverse effect on the child's development.
Condition 2	<p>The need must relate to one of the outcomes specified in the Regulations.</p> <p>Under Regulation 4 the relevant outcomes are:</p> <ul style="list-style-type: none"> • ability to carry out self-care or domestic routines; • ability to communicate; • 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; or • achieving developmental goals. <p><i>Self-care has the same meaning as for adults (see Table 1).</i></p> <p><i>Under Regulation 5 references to a child's development include the physical, intellectual, emotional, social and behavioural development of that child.</i></p>
Condition 3	<p>The need is such that neither the child's parents nor any other person in a parental role is able to meet that need either:</p> <ul style="list-style-type: none"> • alone or together; • with the care and support of others who are willing to provide that care and support; or • with the assistance of services in the community to which the child, the parents or other persons in a parental role have access. <p><i>Under Regulation 4:</i></p> <ul style="list-style-type: none"> • "other persons in a parental role" includes persons with parental responsibility or relatives who play a role in looking after the child; • "relative", in relation to a child, means a step-parent, grandparent, brother, sister, uncle or aunt (including any person who is in that

	<p><i>relationship by virtue of a marriage or civil partnership or an enduring family relationship).</i></p> <p><i>Under Regulation 6 a person is to be regarded as unable to meet a need if doing so, alone or with the assistance of others, either:</i></p> <ul style="list-style-type: none"> <i>• causes significant pain, anxiety or distress to that person;</i> <i>• endangers or is likely to endanger the health or safety of that person or another person; or</i> <i>• takes that person significantly longer than would normally be expected.</i>
Condition 4	<p>The child is unlikely to achieve one or more of the personal outcomes identified by the assessment of their care and support needs unless:</p> <ul style="list-style-type: none"> 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.

Table (3): Person being assessed (Carer)

Condition 1	<p>The need must arise from one of the circumstances specified in the Regulations.</p> <p>Under Regulation 5 the relevant circumstances are providing care for either:</p> <ul style="list-style-type: none"> • an adult who has needs which satisfy Condition 1 & 2 in respect of adults; or • a disabled child.
Condition 2	<p>The need must relate to one of the outcomes specified in the Regulations.</p> <p>Under Regulation 5 the relevant outcomes are:</p> <ul style="list-style-type: none"> • ability to carry out self-care or domestic routines; • ability to communicate; • 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; or • in the case of an adult carer, fulfilment of caring responsibilities for a child; • in the case of a child carer, achieving developmental goals.
	<p><i>Self-care has the same meaning as for adults (see Table 1)</i></p>
Condition 3	<p>The need is such that the carer is not able to meet that need either:</p> <ul style="list-style-type: none"> • alone; • with the care and support of others who are willing to provide that care and support; or • with the assistance of services in the community to which the carer has access. <p><i>Under Regulation 6 a person is to be regarded as unable to meet a need if doing so, alone or with the assistance of others, either:</i></p> <ul style="list-style-type: none"> • <i>causes significant pain, anxiety or distress to that person;</i> • <i>endangers or is likely to endanger the health or safety of that person or another person; or</i> • <i>takes that person significantly longer than would normally be expected.</i>

Condition 4

The carer is unlikely to achieve one or more of the personal outcomes identified by the assessment of their care and support needs unless:

- the local authority provides or arranges support to the carer to meet the carer's need; 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 need
- the local authority enables the need to be met by making direct payments.

The Part 4 Code (paragraph 38) notes that in certain circumstances the local authority has a duty to meet the needs of the individual irrespective of the application of the eligibility criteria, namely:

- Where the person is an adult and it is necessary to meet their needs in order to protect them from abuse or neglect, or the risk of abuse and neglect, then the local authority must meet those needs.
- Where the person is a child (including a child carer) and it is necessary to meet their needs in order to protect the person from abuse or neglect, or the risk of abuse and neglect, or in order to protect the child from other harm, or risk of such harm, then the local authority must meet those needs.

The Part 4 Code (paragraph 42) also notes that local authorities have discretionary powers to meet care and support needs irrespective of the eligibility determination.

The requirement under the eligibility criteria to consider assistance which the adult or a child receives from others who are willing to provide care and support, means that a person can be rendered ineligible for care and support because they have family members or other carers who are willing to provide assistance that would otherwise have to be provided by the local authority. When conducting an eligibility assessment, the local authority must identify all of the individual's presenting needs, including any needs that are being met by care and support provided by others. If the person providing care and support then ceases to provide it, that will constitute a significant change in circumstances and the local authority will be required to undertake a re-assessment of the individual's needs for care and support.

If the assessment concludes that the person is eligible for care and support, **s54 SSWBA 2014** requires that a **care and support plan** is produced. The Part 4 Code (chapter 2)

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provides information regarding the form and content of a care and support plan, and also notes that there must be a named practitioner to act as the plan co-ordinator.

If the person disagrees with the local authority's eligibility assessment then they should be provided with information regarding how to access the [Complaints Procedure](#).

In the same way that an individual can refuse to be assessed, it is possible for someone assessed as needing care and support to refuse the services offered by the local authority. If this happens the local authority must keep a record of the refusal, and it is open to the person to reconsider their refusal at any time.

1.8 What services does a local authority have to provide?

The [Part 4 Code of Practice \(Meeting Needs\)](#) (paragraph 84) sets out the information that must be included in a care and support plan, namely:

- the personal well-being outcomes which have been identified;
- the actions to be taken by the local authority and other people to help the person achieve the outcomes;
- the needs that will be met through the delivery of care and support;
- how progress towards achieving the outcomes will be monitored and measured;
- the date of the next review of the plan.

The Part 4 Code (paragraph 85) notes that, where appropriate, the plan should also set out:

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

None of the legislation prescribes how local authorities should meet an individual's eligible needs, and therefore local authorities will have discretion regarding the services that they choose to provide. However, **s34 SSWBA 2014** does set out some examples of provision that local authorities may choose to offer to meet the care and support needs of

the local population:

- accommodation in a care home, children's home or premises of some other type;
- care and support at home or in the community;
- services, goods and facilities;
- information and advice;
- counselling and advocacy;
- social work;
- payments (including direct payments);
- aids and adaptations; and
- occupational therapy.

The local authority does not have to provide the required services itself, and may choose to commission them from external sources. However, the local authority must ensure that the services provided are of an appropriate quality, and therefore has a duty to monitor both services provided directly by the local authority and services that have been contracted out.

In practice, the services delivered by local authorities fall into three main categories:

- residential care;
- non-residential/home-based services; and
- direct payments.

The local authority's duty to meet an eligible need is not dependent on resource implications, which means that all eligible needs have to be met by the local authority regardless of the financial implications which providing the necessary services will have (see **R v Gloucestershire County Council [1997] UKHL 58**). However, if there is more than one option available to meet a person's eligible needs, then the local authority is able to offer only the cheapest option, provided it is sufficient to meet the relevant need.

1.9 Can the local authority charge for care and support services?

Section 59 SSWBA 2014 gives local authorities the power to charge for care and support services. The [Part 4 and 5 Code of Practice \(Charging and Financial Assessment\)](#) (paragraph 3.4) summarises the key principles that local authorities should apply when designing a **charging policy** for care and support services and notes that local authorities:

- must not charge more than the cost which the local authority actually incurs in providing or arranging the services;
- must ensure that people are not charged more than it is reasonably practicable for them to pay.

In addition, the Part 4 and 5 Code (paragraph 5.12) notes that some care and support services must always be provided free of charge including:

- assessments to determine if someone is eligibility for care and support services, and any review/re-assessment services;
- reablement services up to six weeks duration to support people to return to independent living;
- care and support where a person has Creutzfeldt-Jacob's disease;
- transport to a day service, where the service is provided to meet the person's needs;
- after-care provided under s117 Mental Health Act 1985;
- independent professional advocacy services.

Where a local authority decides that it intends to charge for care and support services, it must have a clear charging policy and must provide a free financial assessment service to determine what the person can reasonably afford to pay.

1.10 Who has to pay for care and support services?

Section 60 SSWBA 2014 stipulates who can be charged for care and support services, and the approach taken varies depending upon whether the services are being provided to an adult or child requiring care and support, or a carer requiring support. The following Table summarises the basis upon which any financial assessment will be conducted:

Person receiving care and/or support	Basis of the financial assessment
Adult	<p>The person responsible for paying any charge is the adult and so the adult's income and capital will be assessed (s60(2) SSWBA 2014).</p>
Child	<p>Where the care and support is provided to the child, the person responsible for paying any charge is any adult with parental responsibility for the child and, therefore, it is that person's income and capital that must be assessed (s60(3) SSWBA 2014).</p> <p>Where the child's needs for care and support are being met by the provision of services to an adult, the person responsible for paying any charge is the adult receiving services and, therefore, it is that adult's income and capital that must be assessed (s60(3) SSWBA 2014).</p> <p><i>However, the Part 4 and 5 Code of Practice (Charging and Financial Assessment) (paragraph 5.6) notes that regulation 3 of the Care and Support (Charging) (Wales) Regulations 2015 prevents any charge being made for care and support provided or arranged to meet the needs of a child. Therefore, whilst the SSWBA 2014 allows charges to be made in principle, charging is prevented by the regulations and so a local authority cannot charge for care and support services provided for children.</i></p>
Carer (Adult)	<p>An adult carer is usually the person responsible for paying any charge and so the carer's income and capital will be assessed (s60(4) SSWBA 2014).</p> <p>However, if the carer's needs for support are met by the provision of care and support to an adult, the person responsible for paying any charge is the adult receiving services and, therefore, it is that adult's income and capital that must be assessed (s60(5) SSWBA 2014).</p>
Carer (Child)	<p>Where support is provided to a child carer, the person responsible for paying any charge is usually any adult with parental responsibility for the child and, therefore, it is that person's income and capital that must be assessed (s60(4) SSWBA 2014).</p> <p><i>However, the prohibition noted above in relation to care and support services for children also applies to child carers, and therefore a local authority cannot charge for support services provided for child carers.</i></p>

1.11 The financial assessment process

Once it has been established whose means should be considered, [The Care and Support \(Financial Assessment\) \(Wales\) Regulations 2015](#) and [The Care and Support \(Charging\) \(Wales\) Regulations 2015](#) set out the approach that local authorities should take when assessing what amount, if any, it is reasonable practicable for the person to pay for the care and/or support services provided. The overarching principle behind the charging policy is that people who are asked to pay a charge are only required to pay what they can afford.

Regulation 6 of the Charging Regulations notes that local authorities do not need to carry out a financial assessment where:

- there is no charge for the service; or
- a flat-rate charge is applied.

Under the Charging Regulations, a **flat-rate charge** is a fixed charge payable by all people who receive the service, regardless of means. The [Part 4 and 5 Code of Practice \(Charging and Financial Assessment\)](#) (paragraph 6.1) notes that flat-rate charges should usually be used for low level, low cost services (such as meals or laundry services). Paragraph 6.3 emphasises that local authorities should not set flat-rates for all services as a way of avoiding their obligations to undertake financial assessments.

Where a financial assessment is required, the Financial Assessment Regulations set out the general principles that must be applied. Regulation 3 states that, before undertaking a financial assessment, the local authority must provide the person being assessed with key information, including:

- confirmation of the care and support services being provided;
- details of the local authority's charging policy;
- if direct payments are being provided, details of the direct payments policy;
- details of the documentation that the person needs to provide in order to enable the local authority to undertake the assessment;
- information about support services available to assist the person with the assessment process.

Regulation 4 states that the person being assessed should usually be given at least **15 days** to provide any information required by the local authority.

The financial assessment will assess the person's income and capital. The Part 4 and 5 Code (paragraph 5.3) notes that where the person being assessed *“holds income or capital as one of a couple, the starting point is that each person has an equal share of each”*.

When assessing the person's **income**, the local authority can do one of three things:

- disregard the income;
- partially disregard the income; or
- fully include the income in the assessment.

Income is always taken into account net of any tax or national insurance contributions (i.e. the amount of income after tax and national insurance have been deducted). If income is 'disregarded' it will be ignored (or partly ignored) for the purposes of the income assessment. The Part 4 and 5 Code (Annex B) sets out the income that will be disregarded, and includes:

- any earnings from employment (including self-employment);
- the mobility component of Disability Living Allowance or Personal Independence Payment;
- direct payments;
- Working Tax Credit.

The Part 4 and 5 Code (Annex B) also sets out the income that will be partially disregarded, and includes:

- the first £10 per week in respect of any War Widows/Widower's pension;
- a 'savings disregard' of up to £5.75 per week in respect of any occupational pension or similar savings.

All other income will usually be fully included in the income assessment, including:

- state pension payments;
- Attendance Allowance;
- the care component of Disability Living Allowance and the daily living component of the Personal Independence Payment;
- Employment and Support Allowance.

When valuing the person's **capital**, the local authority must follow the Part 4 and 5 Code (Annex A), and will consider things like:

- savings;
- premium bonds;
- stocks and shares;
- property (including the value of the person's home unless it is disregarded due to the fact that the person's partner (or another qualifying relative) will continue to live there).

The approach taken to assessing the person's **capital** varies depending upon whether the person is being assessed for residential or non-residential services:

- If the person is being assessed for residential services, the local authority will consider all the person's assets and savings (including their home, unless it is disregarded) and the capital limit is currently £30,000.
- If the person is being assessed for non-residential services, the local authority will consider all the person's assets and savings (excluding their home, as the person will be continuing to live there) and the capital limit is currently £24,000.

(The capital limits are usually reviewed annually, and so these figures may change.)

If the person's capital is less than the relevant capital limit, then it is disregarded in full and the local authority's financial assessment will simply be based upon the person's income. If the person's capital exceeds the capital limit they can be asked to pay for the services provided. However, if the person does not have readily available capital (e.g.

because the majority of their capital is held in the value of their property) it is possible to request that the local authority enters into a **deferred payment agreement**. Usually, this will result in the local authority taking a charge over the property, which is then repaid when the property is eventually sold.

The Part 4 and 5 Code (chapter 8) notes that if a person deliberately disposes of a capital assets (or income) in order to reduce their liability to pay charges in respect of care and support services, then the local authority can assess the person's income/capital as if they were still in possession of the asset, which means that they are likely to have to pay more for the services provided. In addition, the local authority can seek to recover lost income from the person to whom the asset was transferred.

Once the local authority has calculated the person's income and capital, it has to assess what amount, if any, it is reasonably practicable for the person to pay for their care and/or support services. The approach taken varies depending upon whether the services provided are:

- residential care;
- non-residential/home-based services; or
- direct payments.

Where the person requires **residential services** to meet their care and support needs, they will usually be required to meet some or all of the costs. (Residential care and support services do not include health (nursing) care provision, which is discussed separately in **Part 2 – Health care services: the duties and obligations of local health boards**.)

Residential services are usually provided via care homes, which may be run directly by the local authority or by private providers. Where the person is assessed as requiring residential care, the local authority has an absolute duty to provide it irrespective of resources (and this was confirmed by the Court of Appeal in *R v Sefton Metropolitan Borough Council ex parte Help the Aged* [1997] 4 All ER 532).

If the person's capital is above the capital limit, they will be a 'self-funder' and so will have to pay all of the costs of the residential care themselves. If the person's capital is below the capital limit, they will usually be expected to contribute to the costs of their care from their income. In assessing what contribution a person should make from their

income, the local authority must have regard to the fact that any person must be left with no less than the **minimum income amount (MIA)**, to spend on personal items that are not part of their care and support. Currently, the MIA is set at £27.50 per week, but this figure is reviewed on an annual basis and so may change.

Where the person is assessed as needing residential care, the [Care and Support \(Choice of Accommodation\) \(Wales Regulations\) 2015](#) state that the person is entitled to choose the accommodation in which they live, provided:

- the care home can meet the person's assessed needs;
- there is a vacancy;
- the care home does not charge more than the local authority would normally pay to ensure that the assessed needs are met; and
- the care home is willing to accept the local authority's terms and conditions.

In *R (Goldsmith) v London Borough Of Wandsworth* [2004] EWCA Civ 1170, the Court of Appeal held that the local authority had breached the Article 8 right to private and family life of a 95 year old woman, when it decided that she should not return from hospital to the care home where she had been living previously. The Court noted that the local authority had not properly assessed the physical and psychological impact that the move would have upon the woman.

Provided the conditions under the 'Choice of Accommodation' Regulations are met, the person is entitled to choose accommodation in any part of the United Kingdom.

If a person wishes to reside in a care home that charges more than the usual costs that the local authority would pay, then the person can still opt to live in their preferred accommodation but a '**top-up**' or **third party contribution** will be required. The top-up arrangement is needed to ensure that the home receives the difference between what the home charges and what the local authority is prepared to pay. The top-up funding is payable in addition to any contribution that the person has to pay towards the costs of their care. Therefore, in most cases, the top-up funding has to be provided by a third party, and not by the person who is going to be resident in the care home. This means that before a top-up arrangement is agreed, a third party (usually a family member) will have to demonstrate that they are prepared to fund the additional costs of the person

living in their preferred home, and that they have the means to meet the costs for as long as the arrangement lasts.

A person is not entitled to stay in a care home of their choice where a decision has been taken to close the home. A number of legal challenges have been made in these circumstances, and the courts have generally held that, provided the local authority has consulted appropriately and has taken account of all relevant issues, it is the way in which residents are transferred, rather than the principle of the move itself, which is important (see *R v Wandsworth London Borough Council ex parte Beckwith* [1996] 1 W.L.R 60). The same principle applies where the local authority is considering closure of a non-residential service, such as a day centre (see *R (Bishop) v Bromley London Borough Council* [2006] EWHC 248 (Admin)).

Where the person requires **residential care on a temporary basis**, the local authority will apply the same financial assessment process as for residential care unless the stay does not exceed eight weeks, in which case the financial assessment process for non-residential services will be applied.

Where the person requires **non-residential services**, Regulation 7 of the Charging Regulations places a cap on the amount that the local authority can charge. The cap is known as the **maximum weekly charge**, and it is currently £70 per week. (As with the capital limits, this amount is reviewed each year and so the figure may change.) If the service costs the local authority less than the maximum weekly charge, then the most that the person can be charged for the service is the actual cost incurred. If the service costs the local authority more than the maximum weekly charge, then the person cannot be charged more than the maximum weekly charge no matter what their income and capital are. Therefore, the most that any person should pay for non-residential care and support is £70 per week. The only exception to this is where someone receives both costed non-residential services and services which are delivered at a flat-rate. In these circumstances, the person will have to pay the cost of the flat-rate service in addition to any payment that the person is making towards the cost of other services.

However, no person should be expected to pay more than it is reasonably practicable for them to pay. Therefore, when the local authority completes the financial assessment, it will have to decide what the person can afford to pay based on their capital and income.

If the person's capital exceeds the capital limit, then they are likely to be required to pay the full cost of the service, up to the maximum weekly charge. If the person's capital is below the capital limit, the local authority will consider the person's income. As with residential services, when assessing the contribution that the person should make from their income, the local authority must ensure that the person retains a **minimum income amount (MIA)**, from which to meet their basic living expenses. Where the person is receiving non-residential services, the Part 4 and 5 Code (paragraph 11.3) states that the MIA is calculated as follows:

- *basic entitlement* – the Pension Credit Guarantee Credit that the person receives (or an equivalent amount);
- *buffer* – an uplift of 35% of the basic entitlement;
- *disability related expenditure* – an uplift of 10% of the basic entitlement (which can be increased if the actual spending on disability related items exceeds the suggested 10%).

A person cannot be required to use their MIA to contribute towards the cost of their care and support services. Therefore, if a person was assessed as having a total income of £270 per week, and a MIA of £250 per week, the most that they could be asked to contribute towards the costs of their care and support services would be £20 per week.



Key Information and Resources:
The financial assessment process

The way in which a local authority assesses whether someone has to pay for some or all of their care and support services is complex. Age Cymru produces a series of fact sheets which explain, with examples, how the financial assessment process should be applied, and you may find the following useful reference guides:

- ❖ [Paying for a permanent care home placement in Wales](#)
- ❖ [Paying for care and support at home in Wales](#)
- ❖ [Deprivation of assets in the means test for care home provision in Wales](#)

As the name suggests, a **direct payment** is a sum of money that the local authority pays directly to the person. The person then uses the money to purchase the services and support that they need. The [Part 4 Code of Practice \(Meeting Needs\)](#) (paragraph 128) notes that direct payments allow the person to have greater control over the services and support that they receive in order to promote independence. Generally, direct payments are appropriate where the person's needs would be met by non-residential/home-based services, although the Part 4 Code (paragraph 133) notes that they can be used for short and long term residential care and support.

The Part 4 Code (paragraph 146) notes that local authorities must provide information and support to enable a person to decide whether direct payments are appropriate for the person. In particular, where a person is going to employ someone to provide care and support the local authority must ensure that the person is fully aware of their legal responsibilities as an employer (paragraph 164). Where the person lacks capacity to consent to a direct payment regime, the Part 4 Code (paragraph 151) states that an appropriate person can be appointed to receive and manage the direct payments. Ultimately, *“a local authority must only make direct payments where it is satisfied the individual is capable of managing the payment, by themselves or with assistance”* (paragraph 170).

The Part 4 Code (paragraph 139) notes that there is no maximum or minimum amount for direct payments, and the local authority must pay the amount that it thinks is sufficient to ensure that the identified personal outcomes are met. As with the provision of services, the local authority can undertake a financial assessment and may require the person to make a contribution and set the amount of the direct payment accordingly.



Key Information and Resources: Direct payments

Managing a direct payment budget can be demanding. For example, if the person requires help with their personal care they will need to commission that care themselves and be responsible for making the payments to the carers. Therefore, both the local authority and the person need to be sure that the appropriate services will actually be commissioned if a direct payment is made.

Diverse Cymru has a Direct Payments website, which provides a great deal of information about what is involved in managing a direct payments budget, and Diverse Cymru also offers a ‘payroll service’ to help manage payments to carers.

The Part 4 and 5 Code (chapter 12) notes that where the person is a **carer** with support needs, the local authority has discretion regarding whether to charge for any support services provided. If services are to be charged for, the local authority should conduct a financial assessment. However, the Part 4 and 5 Code stresses that charging a carer for support may be a false economy, and in making any charging decision the local authority must consider the impact that charging may have on the carer’s ability to undertake their caring role.

1.12 Can the local authority withdraw services?

The Part 4 Codes of Practice (Meeting Needs) (paragraph 113) notes that care and support plans must be kept under review. Paragraph 125 notes that a review may result in the local authority confirming, revising or closing the plan. In the event that the plan is to be closed, and services no longer provided, the local authority must produce a **closure statement**, which sets out:

- the reasons for the closure;
- an evaluation of the extent to which the personal well-being outcomes were achieved; and
- confirmation that the person has appropriate information, advice or assistance, or access to community based preventative services, to meet their needs.

PART 2 – HEALTH CARE SERVICES: THE DUTIES AND OBLIGATIONS OF LOCAL HEALTH BOARDS

Like social care, health care is a devolved function. This means that the Welsh Government has responsibility for the NHS in Wales. Delivery of health services in Wales is via:

- seven local health boards, which are each responsible for a particular geographical area; and
- three NHS trusts (‘Ambulance Services’, ‘Velindre’ and ‘Public Health Wales’), which each have an all-Wales focus.

An overview of the NHS in Wales, including the geographical boundaries of each of the local health boards, can be found at [Health in Wales](#). For simplicity, the term ‘local health board’ is used throughout this toolkit to encompass all the various NHS bodies operating in Wales.

The information in this Part of the toolkit covers:

- 2.1 What obligations do local health boards have to provide health care services?**
- 2.2 How are health care services accessed?**
- 2.3 Continuing NHS health care**
- 2.4 NHS funded nursing care**
- 2.5 Mental capacity and mental health issues**
- 2.6 The Social Services and Well-being (Wales) Act 2014 and health boards**
- 2.7 Summary**

2.1 What obligations do local health boards have to provide health care services?

The main duties relating to the NHS in Wales are contained in the National Health Service (Wales) Act 2006 (NHS (Wales) Act 2006). Under **s1 NHS (Wales) Act 2006** the Welsh Ministers have a general duty to ensure that Wales has a comprehensive health service, which secures improvement in the physical and mental health of the people of Wales, and improves prevention, diagnosis and treatment of illness. **Section 3** sets out

the health services that must be provided:

- hospital accommodation;
- other accommodation for the purpose of any service provided under NHS (Wales) Act 2006;
- medical, dental, ophthalmic, nursing and ambulance services;
- services for the care of pregnant or breastfeeding women, and young children;
- services for the prevention of illness, for the care of people suffering from illness and after-care services;
- such other services as are required for the diagnosis and treatment of illness.

The legislation does not contain a specific list of services that have to be provided, and the duties imposed on local health boards are very general. This means that local health boards can usually argue lack of resources as a defence to not providing specific services. For example, if a waiting time target for treatment is missed, a legal challenge is unlikely to succeed as, whilst there may have been a failure to meet a specific target, the local health board is complying with its general obligation to provide treatment. This is obviously very different from the position of local authorities providing social care, where all eligible needs have to be met regardless of resourcing issues.

Legal challenges have been successful where a local health board has failed to follow government guidance, as this is likely to render the board's actions unlawful. Similarly, the courts have ruled that a local health board cannot adopt blanket policies concerning a particular patient group or treatment, as this fetters the discretion to provide the particular care that a person requires.

2.2 How are health care services accessed?

For most people their main involvement with health care services will be via their General Practitioner or as a result of a hospital admission. Therefore, unlike social care services, there is generally no formal assessment process needed to access health care services. Citizens' Advice (Wales) provides online guides explaining the core NHS services in Wales, which set out the services that patients should receive from GPs and hospitals.

The more problematic areas are where the service required is community-based. Due to the funding implications, disputes will often arise between local authorities and local health boards regarding whether the service required constitutes social care or health care. The ways in which the key community-based health care services are provided are considered in the following sections.

2.3 Continuing NHS health care

Where a person's primary need is a health care need, they may be entitled to a package of care, including personal care, which is arranged and funded solely by the local health board. A continuing NHS health care (CHC) package can be arranged to support a person who is living in a range of settings, including a hospital, hospice, care home or their own accommodation. A key advantage of obtaining a CHC package is that any personal care services are usually provided free of charge, notwithstanding that a similar service could be charged for if it were provided by a local authority as part of a package of social care. The Welsh Government publishes a National CHC Framework, which sets out the obligations on local health boards and local authorities to work together to assess eligibility for CHC packages. (The web link will also take you to a number of general guides regarding accessing CHC services, including 'Easy Read' versions.)

It is the local health board's responsibility to take reasonable steps to ensure that a CHC assessment is carried out in all cases where it is required. A CHC assessment can be triggered in a number of ways:

- where a person is being discharged from hospital and it appears that they may need CHC support;
- where a person is being assessed for social care services and it appears to the local authority that the primary need is a health need;
- where a person is receiving residential care and their physical or mental health deteriorates so that the level of care provided is no longer adequate;
- where there is a deterioration in a person's physical or mental health and a referral is made via the person's GP.

Once it becomes apparent that a person may have a primary health care need, a **care co-ordinator** will be appointed. The co-ordinator will explain the assessment process and ensure that the person understands the process and consents to the assessment being

completed. A person is entitled to be supported through the assessment, and the co-ordinator will provide information about available advocacy services.

The assessment will be multi-disciplinary, and will involve at least two professionals from a range of disciplines, such as doctors, nurses, therapists and social workers. The person, and their family/carer, will also be involved in the assessment. The assessment will look at whether the person has a primary health need, and will focus on four key areas:

- **Nature** - the type of needs the person has (e.g. physical, mental health or psychological). It also describes the effects on the person and the type of help required to manage the identified needs.
- **Intensity** - identifies which need(s) is so severe that the person requires ongoing care.
- **Complexity** - assesses how symptoms interact, and whether symptoms are difficult to manage or control, or whether skill is required to monitor symptoms, treat the condition and/or manage the care.
- **Unpredictability** – describes the degree to which the person's needs fluctuate and how difficult those needs are to manage. It also describes the level of risk to an individual's health if the right care is not provided quickly.



Key Information and Resources:
Assessing a person with a learning disability

The National CHC Framework specifies that, where the person has a learning disability, the assessment must comply with the [Statement on policy and practice for adults with a learning disability](#).

Once the assessment has been completed a recommendation will be made to the local health board regarding whether the person's needs indicate that the person has a primary health care need. If so, the person will be entitled to a CHC support package, and a care plan will be devised. Normally, all of the services contained in the care plan will be funded by the local health board, and the person will not be required to make any

contribution to the costs. Whilst many people assessed as being eligible for CHC services will move into nursing homes, it is perfectly possible to have a CHC package to support the person living in their own home, provided the person's primary need is a health need. Home-based CHC provision will still be funded entirely by the local health board.

If the person is found not to be eligible for CHC services, it is still possible that they may be eligible for [NHS funded nursing care](#) and/or social care services (see **Part 1 – Social care services: the duties and obligations of local authorities**).

Within 3 months of the person beginning to receive CHC services, the care co-ordinator will arrange a **multi-disciplinary review**. The review will consider whether the person still has a primary health need and, if so, whether the services being provided are meeting that need. Any necessary changes will be made to the care plan, and if the person is no longer assessed as having a primary health need the CHC services can be withdrawn. If the review concludes that there is still a primary health need, the person will continue to receive CHC services and future reviews will take place on an annual basis.

Age Cymru produces a factsheet [NHS Continuing health care and NHS funded nursing care in Wales](#), which contains detailed information about the provision of CHC services in Wales.

Where the CHC assessment identifies that a person requires nursing care, disputes can sometimes arise regarding where that care will be provided. The National CHC Framework (paragraph 4.11) notes that commissioning decisions should take into account the recommendations of the CHC assessment and the person's preferences. However, these must be balanced against the need to ensure that CHC provision is sustainable. This means that the starting point will usually be for the local health board to identify a nursing home that meets the person's needs. If the person then wishes to live in a different home (e.g. because it is closer to family members), that request should be considered by the local health board.

If there are no financial implications, it is likely that the local health board will agree to the person's choice of home. However, if the person's preferred home charges more than the local health board believes is necessary to meet the person's needs, consideration will

have to be given to whether the additional benefits identified by the person, such as being able to maintain social relationships, justify the additional expenditure. If they do, then it is possible for the local health board to agree to fund the full costs. However, if the local health board is not prepared to meet the higher costs, it is possible (in limited situations) for the person, or someone on their behalf, to pay a ‘top up’ to cover the additional expenditure. The situations in which this is possible are considered in the National CHC Framework (paragraphs 4.24 – 4.45).

Where the person’s needs require them to move to a placement outside their current local health board area, the general principle is that it is the local health board where the person was originally resident that is responsible for meeting the costs of the CHC package. The National CHC Framework notes that detailed information about commissioning CHC care packages is available via the Complex Care Information & Support website. Where there are disputes about commissioning out of area placements, the Funded Nursing Care Guidance sets out the approach that should be taken. However, even if there is a dispute about the commissioning arrangements, the provision of CHC services should not be delayed, as funding issues can be rectified retrospectively.

A person is not generally entitled to continue to receive their preferred services where a decision has been made to close that service. The courts have held that the key issue is to ensure that the local health board has consulted appropriately and has taken account of all relevant issues, and that appropriate alternative provision will be made. For example, in *R (Morris) v Trafford Healthcare NHS Trust* [2006] EWHC 2334 (Admin), the High Court quashed the local health board’s decision to close a number of hospital wards on the basis that the local health board had not consulted adequately about the closures. However, even though the decision was quashed, the Court declined to order the local health board to re-open the wards pending the correct decision-making process being undertaken.

2.4 NHS funded nursing care

Where the person does not qualify for CHC services, but still requires some nursing care, they will usually be entitled to NHS funded nursing care. Usually, a person will qualify for funded nursing care where they are living in a nursing home, and have been assessed as requiring the services of a registered nurse, but do not qualify for a package of CHC services.

The most common situation in which NHS funded nursing care arises is when a CHC assessment finds that the person does not meet the CHC criteria but does require nursing care. In these situations, a place in a nursing home will be arranged, and the local health board will pay a set amount towards the nursing home's fees, which is designed to meet the costs of the person's nursing care. However, the other costs charged by the nursing home will have to be met by the local authority and/or the person themselves in the same way that a care and support provided in a residential home would be funded (see [The financial assessment process](#)). The correct approach which health boards and local authorities should take when apportioning nursing and social care costs has been set out by the Supreme Court in **R (on the application of Forge Care Homes Ltd and others) [2017] UKSC 56**, where Lady Hale held that the NHS is required to provide the funding for all elements of the care provided by registered nurses. This includes direct and indirect nursing care that can only be provided by a registered nurse, paid breaks, time receiving supervision, stand-by time, and time spent providing, planning, supervising or delegating the provision of care which ought to be provided by a registered nurse.

As with CHC services, entitlement to NHS funded nursing care will be reviewed after three months and, thereafter, on an annual basis.

It is not possible for someone who is in a residential home, rather than a nursing home, to receive NHS funded nursing care. This is because residential homes do not employ nursing staff. If a person whose needs are being met in residential care requires any nursing services, these will be provided free of charge by the local health board via community-based health services, such as district nurses.

2.5 Mental capacity and mental health issues

Where a person is being assessed for CHC services (or for social care), the professionals undertaking the assessment must ensure that the person being assessed is able to participate fully in the assessment process.

If it appears that the person being assessed is not able to understand the assessment and decision-making process, then it may be necessary to undertake a mental capacity assessment. Any assessment should be undertaken in accordance with the **Mental Capacity Act 2005** and the Mental Capacity Act Code of Practice. If a mental capacity assessment is undertaken, and the person has nobody (other than paid staff) to represent

them, then an Independent Mental Capacity Advocate (IMCA) must usually be appointed. Even where the person has family/friends who are willing to be consulted, decisions about capacity are complex and it may still be appropriate to engage an IMCA. The IMCA's role is to:

- support and represent the person who lacks capacity;
- present information to help assess what is in the person's best interests, including helping the person to communicate their views;
- challenge any decisions which may not be in the person's best interests.

In Wales, IMCA services are currently provided on a regional basis by several different organisations, and you can find more information about the IMCA services available in the separate [Advocacy and Access to Information, Advice and Assistance](#) toolkit.

Even if the person is assessed as lacking capacity, the care and support provided to them should limit their freedom in the least restrictive way possible. However, the Mental Capacity Act 2005 does allow for a person who lacks mental capacity to be deprived of their liberty if:

- it is in the person's best interests to protect them from harm;
- it is a proportionate response to the likelihood and seriousness of the harm; and
- there is no less restrictive alternative.

Wherever the care plan for a person imposes restraints upon their liberty, the Deprivation of Liberty Safeguards (DoLS) apply. The meaning of deprivation of liberty was considered by the Supreme Court in ***P v Cheshire West and Chester Council & Another [2014] UKSC 19***. The Supreme Court noted that deprivation of liberty required three things:

- that the person is confined to a particular restricted place for a non-negligible period of time;
- that the person cannot (or does not) consent; and
- that the State (usually a local health board or local authority) is responsible for the deprivation of liberty.

In assessing when a person could be classed as being deprived of their liberty, the Court went on to note that the deprivation did not require the person to be being cared for in a hospital or other residential setting, and that a person who was receiving community-based care and support, which amounted to continuous supervision from which they were not free to leave, may also be being deprived of their liberty.

Where a person is deprived of their liberty authorisation is required, otherwise the deprivation is unlawful. If the deprivation of liberty is by way of residing in a hospital or care home, then authorisation must be sought from the local health board or local authority as applicable. Where the person is being cared for in their own home, but the care regime still amounts to deprivation of liberty, the authorisation must be obtained from the Court of Protection. Therefore, the impact of the ‘Cheshire West’ decision has been considerable, as it has required all local authorities and local health boards to review the care packages for any person who lacks capacity in order to assess whether the package amounts to deprivation of liberty. If a potential deprivation of liberty is identified, authorisation has to be obtained.

In addition to the mental capacity assessment, the authorisation process requires a **best interests assessment** to be completed in order to consider whether the deprivation of liberty meets the criteria under the Mental Capacity Act 2005. Again, an IMCA should be made available to support the person and their family/friends.

If authorisation for the deprivation of liberty is obtained, then a **relevant person’s representative** will be appointed to keep in contact with the person, and make sure that decisions are being made in their best interests. The relevant person’s representative will usually be a relative or friend, but can be a professional if no relative or friend is available.

Any authorisation should be for the shortest period possible, and so should take into account whether there is likely to be any change in the person’s mental capacity in the future. If it appears that a further period of deprivation is required, an application can be made for a further authorisation. Similarly, if the authorising authority, or the relevant person’s representative, believes that the deprivation is no longer required, an application can be made to terminate the authorisation. (The NHS (Wales) website has a number of standard Forms and Letters relating to authorisation applications.)

The significance of deprivation of liberty proceedings for the individual concerned was recognised by the courts in **Re JM and Others (Deprivation of Liberty) [2016] EWCOP 15**, where Mr Justice Charles held that any person lacking mental capacity who is subject to deprivation of liberty applications must have access to independent representation in court hearings.



Key Information and Resources:
Mental Capacity

The law relating to mental capacity and deprivation of liberty is complex, but there are a number of useful external resources available:

- **Deprivation of Liberty Safeguards** - Guidance issued by the Lord Chancellor and produced jointly by the Department of Health and Welsh Government.
- **Deprivation of Liberty Safeguards** – fact sheet produced by Age Cymru.
- **Deprivation of liberty: a practical guide** – online resource for assessing whether a person is being deprived of their liberty produced by the Law Society.

Where a person has a ‘mental disorder’, and needs to be detained in hospital for either assessment or treatment, then an application can be made for a ‘section’ under the **Mental Health Act 1983**. Detention under section is serious step, and can involve proceedings before a Mental Health Review Tribunal. If you are supporting someone where a section is being considered, then you should obtain specialist advice and an Independent Mental Health Advocate should be appointed. **Advocacy Support Cymru** provides an Independent Mental Health Advocacy service for five of the health board areas in Wales, and the Law Society’s **Find a Solicitor** facility will help you to locate a solicitor who specialises in mental health law.

If you are supporting someone who has been released following a section, then **s117 Mental Health Act 1983** places local authorities and health boards under a duty to

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provide aftercare services. Aftercare services must be provided free of charge, and can cover both residential care and home-based services.



Key Information and Resources: Mental Health

As with mental capacity, the law relating to mental health and the use of sections is complex, but there are a number of useful external resources available:

- [The Mental Health Act 1983 and guardianship](#) – fact sheet produced by the Alzheimer’s Society.
- [Getting it right for people with learning disabilities](#) – guide produced by NHS England to support the families of people with mental health problems, where a period of hospitalisation and aftercare is required.
[Although the guide is produced by NHS England, and so some of the statutory provisions will differ from those applicable in Wales, it is very comprehensive and the general principles covered are applicable to Wales.]


2.6 The Social Services and Well-being (Wales) Act 2014 and health boards

Whilst the focus of the SSWBA 2014 is the provision of social care, the Act does place duties on health boards to co-operate with local authorities, particularly in relation to the production of population assessments to inform the provision of care and support services. The legislation also encourages health boards and local authorities to work in partnership.

The Welsh Government issued a [Welsh Health Circular \(WHC \(2016\) 028\)](#) on 6th May 2016, which sets out the implications of the SSWBA 2014 for health boards. In addition, guidance has been published summarising the [Alignment of Social Services, NHS and Public Health outcomes frameworks](#).

2.7 Summary

The following Table summarises the key points relating to the duties and obligations of local health boards in Wales:

	<u>Part 2 – The duties and obligations of local health boards</u> Summary
<ul style="list-style-type: none">❖ Under section 1 NHS (Wales) Act 2006 the Welsh Ministers have a general duty to ensure that Wales has a comprehensive health service, which secures improvement in the physical and mental health of the people of Wales.❖ There is generally no formal assessment process needed to access health care services. Most services are provided by a General Practitioner or via hospital admission.❖ A person's whose primary need is for health care may be entitled to a continuing NHS health care (CHC) package. This can be arranged to support a person who is living in a range of settings, including a hospital, hospice, care home or their own accommodation. It is the local health board's responsibility to take reasonable steps to ensure that a CHC assessment is carried out in all cases where it is required.❖ When assessing a person with a learning disability, the National CHC Framework specifies that the assessment must comply with the Statement on Policy and Practice for Adults with a Learning Disability.❖ Any CHC package will usually be subject to a multi-disciplinary review within 3 months to consider whether the person still has a primary health need and whether the services being provided are meeting that need. The review can make changes to the CHC package, and if the person no longer has a primary health need services can be withdrawn.	

- ❖ Where a person does not qualify for a CHC package, but still requires some nursing care, they will usually be entitled to NHS funded nursing care. Usually a person will qualify for funded nursing care where they are living in a nursing home and have been assessed as requiring the services of a registered nurse. As with CHC services, entitlement to NHS funded nursing care will be reviewed after three months and thereafter on an annual basis.
- ❖ If it appears that the person being assessed is not able to understand the assessment and decision-making process, then it may be necessary to undertake a mental capacity assessment. Any assessment should be undertaken in accordance with the Mental Capacity Act 2005 and the Mental Capacity Act Code of Practice. All practical steps must be taken to support the person to understand the decisions to be made. This might include different communication methods and providing the information in 'easy read' format. If a mental capacity assessment is undertaken, and the person has nobody to represent them, then an Independent Mental Capacity Advocate will usually be appointed. Wherever the care plan for a person imposes restraints upon their liberty, the Deprivation of Liberty Safeguards apply.
- ❖ Where a person has a 'mental disorder' and needs to be detained in hospital for either assessment or treatment, then an application can be made for a 'section' under the Mental Health Act 1983. If a section is being considered, then an Independent Mental Health Advocate should be appointed to support the person.

PART 3 – CHALLENGING DECISIONS

Given the complexity of the law relating to both social care and health care, and the fact that different agencies may be involved, disputes can arise regarding what services should be provided and how services will be funded. This Part summarises the various ways in which decisions can be challenged.

Before challenging any decision it is very important that the person challenging the decision gathers together all the relevant evidence. In particular, if services have been refused, it is essential to ask the local authority or local health board to set out in writing the reasons why the refusal was made so that there is a clear record of the decision being challenged. For example, if a local authority were to refuse to meet an eligible need due to funding constraints, it would be essential to have that decision in writing, as the rationale for the decision would be unlawful and so a complaint would be bound to succeed. Information about how to approach writing a letter of complaint is contained in Appendix 1 of the separate **Accessing leisure and community services** toolkit on the Mencap Cymru website.

The information in this Part of the toolkit covers:

- 3.1 Review Procedures**
- 3.2 Complaints Procedures**
- 3.3 The Public Services Ombudsman for Wales**
- 3.4 Judicial Review**
- 3.5 Advocacy services**
- 3.6 Cardiff University, School of Law and Politics pro bono unit**

3.1 Review Procedures

If a person is unhappy about the outcome of an assessment of their needs for care and/or support, it is advisable to try and resolve the issue informally by discussing it with the designated lead practitioner who carried out the assessment, or their manager. For example, if a key piece of information has been misunderstood during the assessment process it may be possible to correct this and change the outcome decision. If the issue cannot be resolved informally, then it will be necessary to use the local authority's **Complaints Procedure**.

Where a person is unhappy about the outcome of a continuing NHS health care assessment, it is again sensible to raise the issue with the care co-ordinator in order to see if it can be resolved informally through the **local review procedure**. If the dispute cannot be resolved via the local review procedure, then the person is entitled to ask for their case to be referred to an **independent review panel**. If the dispute is not resolved via the review panel then it may be possible use the local health board's [Complaints Procedure](#), although the complaints procedure may not be able to add anything to the local review and the independent review. If using the complaints procedure is not appropriate, then it may still be possible to make a referral to the [Public Services Ombudsman](#).

3.2 Complaints Procedures

Every local authority and local health board has to have a complaints procedure, and details of how to access the procedure should be available via the organisation's website. Alternatively, you could contact the organisation directly and request a copy of the procedure. If the complaint relates to a service being provided by another organisation (e.g. a care provider on behalf of a local authority), the person making the complaint is likely to be asked to consent to details of the complaint being provided to the other organisation as part of the investigation process.

Since 1st August 2014, where the complaint is about social care provided by a local authority, the Welsh Government's [Guide to handling complaints and representations by local authority social services](#) must be followed. This procedure divides any complaint into two stages:

Stage 1 (local resolution) - requires the local authority to arrange a discussion with the complainant within 10 days in order to try and resolve the matter as quickly and efficiently as possible.

Stage 2 (formal investigation) – if the complainant is not happy with the outcome of Stage 1, they can request that an independent investigator be appointed who will prepare a report and make any appropriate recommendations. The local authority will then produce a formal response to the complaint, taking into account the outcome of the independent investigation, and this response should be issued within 25 days of the Stage 2 process being commenced.

Where the complaint is about residential or home-based care provision, it may also be appropriate to contact the Care and Social Services Inspectorate Wales (CSSIW). The CSSIW is responsible for inspecting, regulating and maintaining standards of social care in Wales. Therefore, if the care home, or agency providing home-based care, is registered with the CSSIW, it may be appropriate to make the CSSIW aware of the complaint.

The Welsh Government also produces guidance regarding how the NHS in Wales should deal with a complaint. The guidance is called Putting Things Right, and sets out the stages that will be followed when a complaint is made. The guidance notes that a final response should be provided within 30 working days.

Sometimes asking a local councillor, Assembly Member or Member of Parliament to raise or support a complaint can bring effective pressure to bear. In addition, asking the media to become involved can also be effective. However, the media will obviously be looking for a story, and involving the media is likely to mean that personal details about the complainant's life will be reported in the press. General information about how to make a complaint about a public service in Wales is available from the Complaints Wales website.

3.3 The Public Services Ombudsman for Wales

The Public Services Ombudsman for Wales is an independent person who has a legal power to review decisions made by public bodies and independent care providers in Wales.

Before you can ask the Ombudsman to investigate, you will usually need to have already made a formal complaint to the relevant local authority or local health board. If the Ombudsman decides that the service provided has been inadequate, he will usually issue a report and recommendations. Whilst the recommendations are not binding, the local authority or local health board will usually comply with any recommendations made.

The Ombudsman produces a series of Factsheets, which explain what the Ombudsman can and cannot do in relation to the issues about which he often receives complaints,

including care provision. The website also has a [Casebook](#), which summarises cases that the Ombudsman has investigated and explains the outcomes.

3.4 Judicial Review

Judicial Review is a legal process that allows the court to review a decision by a public body. If the court decides that the way in which the decision was taken was wrong in some way (e.g. because important information was not taken into account), the court can order that the decision-making process is undertaken again. However, judicial review only looks at the decision-making process and not at the merits of the decision. This means that, even where a judicial review application is successful, the court cannot substitute its own decision in place of that of the local authority or local health board, and the most the court can usually do is require the decision to be taken again using the correct process. Of course, this could result in a different decision being made (e.g. if new information is available, which was not considered previously).

Judicial review is a complex process and must be started within 3 months of the date of the disputed decision. If it appears that judicial review may be necessary, then you should consider consulting a solicitor to see whether there are grounds for judicial review and whether legal aid is available to cover the costs involved. The Law Society has an online [Find a Solicitor](#) search facility, which allows you to search for a solicitor specialising in judicial review cases in the local area. In addition, the Legal Aid Agency has an [online eligibility checker](#), which asks a series of questions about the type of dispute and the person's financial circumstances, and then provides an indication regarding whether legal aid may be available.

3.5 Advocacy services

The SSWBA 2014 requires that local authorities make a range of information, advice and assistance, and advocacy services available to support people with care and support needs. Therefore, if you need to make a complaint about the provision of care and support services, you should be able to access advocacy support to assist you. (More information about accessing advocacy services is available in the separate [Advocacy and Access to Information, Advice and Assistance](#) toolkit.)

In Wales, local community health councils are required to provide independent advocacy services to support adults making a complaint about the service that they have received

from the NHS. Information regarding where the local advocacy service is based, and how to contact an advocate, can be found on the [Complaints Advocacy Service](#) website.

3.6 Cardiff University, School of Law and Politics pro bono unit

The School of Law and Politics at Cardiff University operates a programmes of clinical legal education schemes, where its students offer pro bono advice and assistance. The [Law in Healthcare scheme](#), offered in conjunction with Hugh James Solicitors, specialises in disputes relating to NHS continuing health care.

ADDITIONAL RESOURCES

The following websites contain useful information:

Organisation	Website
Age Cymru (Produces a series of 'home and care' facts sheets, which provide guidance regarding accessing social and health care)	www.ageuk.org.uk/cymru/
British and Irish Legal Information Institute (BAILII) (Provides free access to law reports)	www.bailii.org
Care and Social Services Inspectorate Wales (Has responsibility for inspecting, regulating and maintaining standards of social care in Wales)	http://cssiw.org.uk/?lang=en
Cerebra (Charity supporting children with neurological conditions and their carers, which produces a series of guides relating to social care)	http://w3.cerebra.org.uk/help-and-information/
Children's Commissioner for Wales (Information about how the UN Convention on the Rights of the Child is applied in Wales)	www.childcomwales.org.uk/uncrc-childrens-rights/
Citizens Advice (Wales) (Produces a range of legal information guides, which can be searched to take into account differences in law resulting from devolution)	www.citizensadvice.org.uk/wales/
Complaints Wales (Telephone and web based signposting service offering advice on how to complain about a public service in Wales)	www.complaintswales.org.uk/en.aspx
Diverse Cymru (Provide a range of services that promote equality and independent living, including a 'direct payments' service)	www.diverseecymru.org.uk/index.php

Easy Read Health Wales (Website providing a variety of information about health in an Easy Read format)	www.ldw.org.uk/projects/past-projects/easy-read-health-wales.aspx#.Ww6R9GeouUk
Equality and Human Rights Commission (Information about how the UN Convention on the Rights of Disabled People)	www.equalityhumanrights.com/en/our-human-rights-work/monitoring-and-promoting-un-treaties/un-convention-rights-persons-disabilities
Law Society (Will help you find a solicitor in your area)	www.lawsociety.org.uk
Law Wales (Website sponsored by the Welsh Government to provide information on all areas of law developed to Wales)	http://law.gov.wales/?lang=en
Luke Clements (Resources relating to social care law authored by Professor Luke Clements)	www.lukeclements.co.uk/
Older People's Commissioner for Wales (Information about how the UN Principles for Older Persons)	www.olderpeoplewales.com/en/about/un-principles.aspx
Public Services Ombudsman (Investigates complaints about public bodies in Wales)	www.ombudsman-wales.org.uk/en.aspx

For More Information you can contact:

Mencap WISE on 0808 8000 300 (Monday to Friday, 9am – 5 pm)

Or e-mail information.wales@mencap.org.uk



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