Welsh Government

Report of the Eligibility Technical Group

Options for the Eligibility Framework for Care & Support under Regulations stemming from the Social Services and Well-being (Wales) Act 2014

Revised Final Draft
13 June 2014
Executive Summary

1 Background and context

The Eligibility Technical Group was established by the Deputy Minister for Social Services to advise the Welsh Government on producing Regulations and a Code of Practice on the determination of eligibility for care and support services under the Social Services and Well-being (Wales) Act.

The NHS and Community Care Act 1990 created a legal right to an assessment but no automatic right to services. The right to a service was established through the guidance Creating a Unified and Fair System for Accessing and Managing Care.

The Social Services and Well-being (Wales) Act sets out both a right to an assessment, and a duty on local authorities to meet eligible needs. Needs can be met not only through the provision of services but through active support and assistance to enable people to meet their own needs, for example, by assisting people to access local services themselves or supporting people to develop skills and confidence. A person’s needs could also be met by providing support / services to another person.

2 Task

The Eligibility Technical Group was tasked to:

- Develop descriptors across the range of service user groups (adults, children and carers) that will describe the needs / circumstances / conditions / support networks that give rise to an ‘eligible need’ and so establish an enforceable right whereby local authorities will have a duty to consider what can be done to meet these.
- Describe levels of risk and safeguarding needs, and legal status, that would mean that someone will be ‘pass-ported’ in to eligibility without the need for a separate process of assessment.
- Describe the needs / circumstances / conditions / support networks whereby people will routinely access information or advice and preventative / community support through the general duty on the authority without an enforceable right for the individual.
- Shape the code of practice for eligibility by bringing in their technical knowledge of good practice in eligibility decision making.
The report includes the following:

- A clear statement about the rights of individuals and families, and the duties of local authorities within a framework of three different circumstances related to wellbeing and social care and support. These have been described as: (i) wellbeing support, (ii) social care and support and (iii) automatic care and support.

- Recommendations about how different elements within the eligibility statement should be defined.

- Different proposed criteria which should be applied to each of these three circumstances to enable a judgement to be made about whether someone is eligible for support from the local authority or other agencies.

- An analysis of three options for the factors to be considered in judging eligibility for access to social care and support.

- A favoured option with specific definition of eligibility for access to social care and support that ‘The individual would become eligible for social care and support if an assessment establishes that they can, and can only, overcome barriers to achieving their well-being outcomes by the local authority preparing a care and support plan (or a support plan for a carer), and ensuring that it is delivered.’

- Discussion about the potential implications of the proposed approach for other aspects of the implementation of the Act.

The report has been prepared following engagement at national workshops held in May and June 2014, prior to subsequent formal consultation on regulations and a code of practice later in the year. The report will inform and link with the work of other technical groups advising on Regulations and Code of Practice across the new model for social care and will have particular relevance to the work on Assessment and Care Planning and the Provision of Information, Advice and Assistance.
Options for the Eligibility Framework for Care & Support under Regulations stemming from the Social Services and Well-being (Wales) Act 2014

1 Introduction

This document outlines options for the design of national eligibility criteria for Wales. These were with advice from a Technical Working Group on Eligibility considering this issue on behalf of the Welsh Government in March and April 2014. The report has been prepared following the final meeting of the group on 2 April 2014 and refined through a wider stakeholder engagement process during May and June 2014.

Determining eligibility is one step in a person's journey through the system of care and support and should not be seen in isolation from other core elements of the new service model introduced through the Act. It is an element within a wider process for assessing and responding to the needs of the individual that reflects and complements the process for assessing and responding to the needs of the wider community.

The report has been produced to support the development of regulations for determining eligibility. Further details about the wider process of assessing, planning, delivering and reviewing care and support will be developed through regulations under other sections of the Act and through the overarching code of practice.

2 The purpose and scope of eligibility in the new system

The Social Services and Wellbeing (Wales) Act 2014 and its associated statements are clear about the purpose of eligibility criteria in the new framework for social care in Wales:

- To support a system change towards preventing need occurring and maximising opportunities to intervene earlier to offer people proportionate help in meeting or reducing need.
- To help systems focus on people’s well-being, their strengths and on building on their family and community networks and links.
- To help people themselves be at the centre of decisions about their well-being and to remain in control of their lives.
To help ensure people get the right support, in the right place, at the right time
Whilst assessment and eligibility will play an integral role in the new system for well-being, care and support, the significance that this will have on whether an individual receives support to meet their need will be considerably reduced. Rather, the new system will place greater focus on prevention, transparency, and building on people strengths to enable them to exercise voice and control over what matters to them, their needs and aspirations. This will mean that more people will be supported without needing to have eligibility criteria applied.

Nevertheless appropriate eligibility criteria will be crucial in ensuring that those who most need social care and support will be able to get it. Therefore the new regulations for eligibility, in tandem with those for associated assessment and care support, must:

- Treat people as equal partners in designing their care and support.
- Set out a minimum threshold on what needs are eligible needs for care and support for children, adults and support for carers that local authorities across Wales must meet.
- Focus on the person’s needs for care and support, the impact of those needs on their well-being, and the level of risk to the individuals if those needs are not met.
- Make it clear for people what their entitlements are; and introduce a level of consistency about the threshold to give people more confidence that if they want to move to another area in Wales, and their circumstance have not changed, then their eligibility for care and support will continue.

The Act aims to promote a much more consistent approach to meeting the social care needs of all of the population, but nevertheless it is recognised that the eligibility framework must be sensitive to the differing needs, context and outcomes for children, adults and carers. It cannot be a ‘one size fits all’ framework. It must recognise the differences in the basis for support for people at different stages of their life. In addition, carers want to be recognised for their contribution and to be able to access timely support and advice to help them care and to support their own well-being.

The eligibility criteria must therefore take into account the different characteristics and circumstances, and changing needs over time, of the individuals in each group; child, adult or carer, and regulations will be sensitive to, and reflect the differing characteristics for children, adults and carers.
Looking at the required scope of eligibility in more detail, the Act and associated Government statements are also clear that:

- The new national level will need to be applied with consistency across the whole of Wales.
- It is likely that the national eligibility criteria will be at one level. This is likely to be based on the level ‘substantial’ in the current arrangements.
- The system will preserve local authorities’ responsibilities to children who in the current arrangements are defined as ‘in need’, and local authorities will continue to have specific duties to children in need of protection; and Looked After Children, for whom Members have a corporate responsibility.

The eligibility criteria must help to ensure that the duties of the local authority are clear and that the rights of the individual are upheld. These are:

<table>
<thead>
<tr>
<th>Access to..</th>
<th>Duty of Local Authority and rights of the individual</th>
<th>Who this applies to</th>
</tr>
</thead>
<tbody>
<tr>
<td>Information, advice and assistance and universal and preventative services (well-being support) (As required under Part 2 of the Act).</td>
<td>A general duty on a local authority and its partners to arrange for the provision of a range of services to meet the needs of its community. The local authority must secure the provision of services providing</td>
<td>Accessible by all – There is no requirement for eligibility to apply here.</td>
</tr>
<tr>
<td>Care and support via the local authority (As required under Parts 3 and 4 of the Act).</td>
<td>An enforceable right of the individual whereby the local authority must assess their need for care &amp; support and must consider what could be done to meet needs; determine whether any of the needs meet the eligibility criteria, or must otherwise be met by the local authority.</td>
<td>Accessible by those who meet the relevant criteria – eligibility may apply here.</td>
</tr>
</tbody>
</table>
These rights and duties are complemented by the requirements on those acting on behalf of the local authority to act responsibly within the requirements of their employment and their professional codes. So, for example to ensure continued registration as a social worker by the Care Council Wales, a professional must:

- Protect the rights and promote the interests of service users and carers;
- Strive to establish and maintain the trust and confidence of service users and carers;
- Promote the independence of service users while protecting them as far as possible from danger or harm;
- Respect the rights of service users whilst seeking to ensure that their behaviour does not harm themselves or other people;
- Uphold public trust and confidence in social care services; and
- Be accountable for the quality of their work and take responsibility for maintaining and improving their knowledge and skills.

Indeed, in some parts of the health and care system, such as referral to hospital from a GP, these professional standards, along with local guidance and practice guidelines from agencies such as the National Institute of Health and Care Excellence, are already considered sufficient, without the need for eligibility criteria, to ensure that the response to an individual’s needs and/or circumstances is appropriate and timely.

### 3 A Framework of support

However, national eligibility criteria in social care are recognised as having an important part to play in securing rights for people and ensuring local authorities meet their duties. The Social Services and Wellbeing (Wales) Act identifies three different circumstances in which judgements about whether someone is eligible for support need to be made, and if so what support they are actually eligible for. We have called these:

- Wellbeing support
- Social care and support
- Automatic care and support

The characteristics of these three different circumstances are described below:
3.1 Wellbeing support

This level of support will apply to any person who may have a need for advice, guidance or solutions which can be offered without the person needing a comprehensive social care assessment and plan. In this circumstance the person should be able to expect a proportionate assessment of their situation by any appointed professional, and appropriate information, advice, guidance or solutions to:

- meet their needs;
- help them achieve the outcomes they want;
- complement their own resources and capacity;
- overcome barriers that prevent them achieving their outcomes;
- reduce risks to themselves or others and
- promote well-being and prevent needs escalating

The criteria for access to this support are extremely wide-ranging, as the intention is that no one who considers that such support may be needed should be deterred or barred from access. The Act is clear that it is intended that many more people will be supported by local authorities and their partners in this way, and that this will help to reduce demand for formal and complex social care and health care support. At a national level therefore, the technical group proposes that the eligibility criterion for wellbeing support is simply that the person, their carer or any person on their behalf may have the need for advice, guidance or solutions which could be provided by any agency in Wales.

Note: The requirement on the local authority to consider whether the person would benefit from well-being support (such as preventative services and Information, Advice and Assistance) is independent of any determination of eligibility

3.2 Social care and support

The second level will apply to any person who cannot simply use wellbeing support, or whose family or carer cannot use well-being support, to help them to address their circumstances. They will need formal social care and support to help them meet their needs; achieve the outcomes they want; complement their own resources and capacity; or reduce risks to themselves or others. In this circumstance the person should expect that their proportionate assessment will consider each of these areas, identify what solutions they need and how they will be delivered, and guarantee that the local authority will ensure that this happens.
Current arrangements for judging eligibility for social care and support vary. For example, *The Integrated Framework for Assessment, Care Planning and Review for Older People (Welsh Government December 2013)* requires that local authorities continue to use Fair Access to Care Services criteria. This requirement would be replaced by the new criteria. In children’s services for example, the *Framework for Assessment of Children in Need* identifies domains for assessment but does not require the application of formal national eligibility criteria. Mental health and learning disability services also have their own national guidance on assessment. The new framework would replace existing national criteria but would not inevitably have to replace tools such as assessment frameworks.

The relevant criteria need to be explicit in ensuring that social care services are targeted at those who most need this form of support, and flexible enough to ensure that the different circumstances of people at different stages of their lives are recognised and inform any assessment against the criteria.

Three options for the criteria for eligibility for social care and support have been considered and are explored in section 4.

### 3.3 Automatic care and support

This third level applies to those people who because of the risks or the level of need involved in the circumstances they are in, or their legal status, automatically must be regarded as eligible for social care and support, whether or not they would qualify if they were assessed against the national eligibility criteria.

This would apply, for example, to children where there are grounds for providing accommodation for children without parents or who are lost or abandoned, or where there are grounds for care orders, supervision orders, child assessment orders, emergency protection orders, the use of police protection powers or an investigation under section 47 of the Children Act 1989. It would also apply to adults who might be considered an “adult at risk of abuse and/or neglect” where there are grounds to investigate or for an adult protection and support order.

As with social care support, in such circumstances the person should expect that their assessment will consider their needs, personal outcomes, barriers, resources and capacity and risks, identify what solutions they need and how they will be delivered, and guarantee that the local authority will ensure that this happens.
The relevant national criteria in this circumstance would be that the person’s legal status is such that the local authority has a responsibility to provide social care and support. There will be other people who do not meet this criteria but the local authority nonetheless has a responsibility to meet some or all of their assessed needs in order to protect the person from abuse or neglect or a risk of abuse of neglect (or, in addition, from other harm or risk of harm if the person is a child). In this case, the person will be eligible for automatic care and support in accordance with the criteria in section 32(1)(b) of the Act.

There was a divergence of views on the part of members of the Technical Working Group about whether children with disabilities should be automatically included in this group. Some were concerned about ensuring that these children and their families should not lose access to services. The majority view held that a comprehensive and holistic assessment should not draw an automatic conclusion about the response to an individual child on the basis only of their disability.
### 3.4 In summary

The three levels of eligibility can be summarised as in the following framework:

<table>
<thead>
<tr>
<th>Person’s Circumstance</th>
<th>Person’s Rights</th>
<th>Criteria</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wellbeing support needed</td>
<td>Advice, guidance and solutions that do not require a social care and support plan.</td>
<td>The person or any person on their behalf may have the need for advice, guidance or solutions which could be provided through the Information Advice and Assistance service (section 17 of the Act) or through access to preventative and early intervention services including those provided through social enterprises and co-operatives (sections 15 &amp; 16 of the Act).</td>
</tr>
<tr>
<td>Social care and support needed</td>
<td>Co-ordinated support to meet needs, personal outcomes, remove barriers, address risks and build on resources.</td>
<td>Three options see section 4 below</td>
</tr>
<tr>
<td>Automatic care and wellbeing support needed</td>
<td>Co-ordinated support to meet needs, personal outcomes, remove barriers, address risks and build on resources.</td>
<td>The person’s level of risk or need is such that life is, or will be, threatened, or there is a need to protect the person from abuse or neglect, or the risk of abuse or neglect, and in the case of a child other harm or risk of such harm or The person’s legal status is such that the local authority has responsibility to deliver social care and support.</td>
</tr>
</tbody>
</table>
4  Eligibility for social care and support

When a person is being considered for social care and support, the Technical Group identified three options for the way in which national criteria might be formulated to inform a judgement about eligibility at this point:

5  Option 1: No national criteria

In this option there would be no national criteria upon which to draw when making a judgement about whether an individual, and/or their family or carer, should receive social care and support to secure the solutions they need. The process would simply be guided by a duty on the local authority to make an appropriate judgement with the individual about the best way to respond to their circumstances.

The judgement would need to be made at the right point in the person’s journey, and to be fair, rigorous, transparent and effective in helping the person get the best services available. However, without formal national eligibility criteria the factors which the local authority would need to base these decisions on in this option will be:
The information presented by the person, and/or their family or carer and other agencies and people about their needs, personal outcomes, resources and risks.

The professional judgement of the worker and their knowledge of the services or support which would be likely to be most useful to the individual, and/or their family or carer, backed up by professional protocols and organisational duties to behave in a way which will protect the best interests of the person.

Local information and guidance about available services.

Local protocols about assessment and care planning and support.

This approach is already used extensively in the assessment of health and care in Wales - for example, when an individual approaches a health professional. In some ways it would actually fit with some aspirations in the Act to encourage professionals and people to be more creative in addressing a need or securing their personal outcomes. However this option is not recommended because:

- The approach does not fit with existing commitments about having clear eligibility criteria for access to social care and support which have already been made during the course of the passage of the Act.
- Without a national framework or extensive work across Wales by local authorities together to agree common protocols to responding to needs, then it is likely that that more localised arrangements and inconsistent support will be created.
- In situations where the person and the professional disagree about the most appropriate response to a situation, there is relatively little basis upon which the disagreement could be resolved. There would be a temptation for those with loudest voices to get most support over time, or growth of various legal and quasi-legal processes to resolve differences of view.

Therefore this option is not recommended.

6 Option 2: Eligibility based on need

In this option there would be a set of national eligibility criteria which would guide the person, and/or their family or carer, and the local authority when deciding whether the local authority has a duty to provide or arrange solutions to the issues they are dealing with. In this case these would be based simply on presenting needs and problems. It would specify a national minimum eligible needs threshold which would be applied consistently across the country. In this option, the basis for the judgement would be drawn from a wider source than that in Option 1 as follows:
The information presented by the person, and/or their family or carer and other people and agencies about their needs.

The professional judgement of the worker and their knowledge of the services or support which would be likely to be most useful to the specific individual and/or their family or carer, backed up by professional protocols and organisational duties to behave in a way which will protect the best interests of the person.

Local information and guidance about available services.

Detailed local protocols about the application of assessment and care planning and support.

National eligibility criteria specifying the characteristics of people who would be considered appropriate for social care and support in terms of their needs.

In this option the criteria upon which the judgement about “eligibility” is made would be based on the concept of ‘need’. This is what the traditional FACS (Fairer Access to Care Services) criteria were concerned with. They are described as

‘Those needs for care and support which a local authority would have a duty to meet, and in doing so will involve the individual in developing a care and support plan … The purpose of the eligibility threshold is to determine if a person’s needs are of a nature or level which should be met by the local authority.’
An example of this approach is one whereby local authorities will have to provide or arrange services for a person whose needs are above a specified threshold; if the person so wishes. These are the needs which must be met, provided the person needing care is ordinarily resident in the local authority area, and the person needing care or the carer as appropriate wants the local authority to meet them. The proposed criteria summarise what the central government considers the most important needs in a high-level description which local authorities would have to interpret and implement. An early consultation from the Department of Health on proposed Eligibility Criteria Regulations under the Care Act illustrates this approach:

The person is:

- (a) is unable to carry out one or more basic personal care activities and as a consequence there is a significant risk to any aspect of the adult’s well-being;
- (b) is unable to carry out one or more basic household activities and as a consequence there is a significant risk to any aspect of the adult’s well-being;
- (c) is unable to fully carry out any caring responsibilities the adult has for a child;
- (d) needs support to maintain family or other personal relationships, and a failure to sustain such relationships has or is likely to have a significant impact on the adult's well-being;
- (e) is unable to access and engage in work, training, education or volunteering and as a consequence there is a significant risk to any aspect of the adult’s well-being; or
- (f) is unable to access necessary facilities or services in the local community and as a consequence there is a significant risk to any aspect of the adult’s well-being.

There can be similar types of criteria for carers. The problem with this needs-based approach is that they focus on a very limited proportion of the full range of factors which might have an impact on the final judgement about the kind of support which might be right for a specific individual and/or their family or carer – they centre on inability or deficits and the risks this poses. For example, there is no mention of the strengths and capacity which a person might bring to bear on their situation, nor the outcomes they actually might want – this does not fit for example with the Disability Wales Toolkit “Transforming Social Services; Towards and Enabling Wales” which was developed with the Welsh Government to inform policy makers and others as they develop guidance to underpin the Act.
Secondly, although seemingly objective when first considered, the criteria are in fact highly subjective. The prevalence of the words ‘basic’, ‘significant’ and even ‘wellbeing’ indicate the practical difficulties of getting consistency of response by professionals and individuals to such criteria. Indeed, although it is attractive to have a set of criteria such as this to give the impression of consistency across the country, much of the criticisms of eligibility criteria over the years has been that they are loose enough to be applied very differently between different authorities, services and even teams.

This option is not recommended.

7 Option 3: Eligibility based on a judgment that encompasses needs, outcomes, barriers, risks and resources

7.1 The approach

The third option is to create eligibility criteria which have the purpose of providing a minimum national threshold for access to solutions from the local authority through the planning and delivery of support, based on a comprehensive analysis of a person’s situation. Unlike the previous option, the eligibility test would be based on a comprehensive set of 5 inter-related factors to ensure that local authorities consider the persons circumstances in the round:
All five of these factors would need to be taken into account in the assessment, and from this, a judgement reached about whether the person is eligible for social care and support, based on the following criteria:

The individual would become eligible for social care and support if an assessment establishes that they can, and can only, overcome barriers to achieving their well-being outcomes by the local authority preparing a care and support plan (or a support plan for a carer), and ensuring that it is delivered.

This determination will encompass an assessment that without the local authority preparing and ensuring the delivery of a care and support plan (or a support plan for a carer), the individual is unlikely to achieve or maintain, or to have the opportunity to achieve or maintain personal well-being, health or development outcomes or their well-being, health or development is likely to be significantly impaired, or further impaired.

The individual would therefore have an enforceable right to social care and support where the assessment of the local authority is that they are facing barriers to achieving their personal well-being outcomes, and that these barriers can, and can only be overcome by the local authority ensuring the delivery of care and support.
This care and support will also of course be able (indeed expected) to support people to access any appropriate community based services where these contribute to meeting the person’s well-being outcomes.

It would be strongly desired, but not required, that the individual and the local authority will agree the plan. However, the local authority may also determine that someone has a right to support even though that person may refuse to accept it. In these instances the person’s eligibility status would need to be preserved and the local authority would be required to reframe their support so as to maintain their awareness of the person’s needs and enable an appropriate and timely response should the person re-consider their refusal of care and support.

It would be the legal duty of the local authority and the professional working within the relevant professional framework to exercise their responsibilities appropriately and ensure that care and support is properly delivered. There would of course be responsibilities on the local authority and its partners to deliver services where the person would qualify automatically qualify for care and support due to legal status or due to abuse, neglect or harm or risk of abuse, neglect or harm.

### 7.2 Defining barriers

It would be impossible at a national level to define exactly what a barrier might look like for every single person in Wales, and it is a principle of the Act that local authorities should respond in a person-centred, co-productive way to each individual’s particular circumstance. As discussed previously, this means that in defining a barrier the assessment will need to take account of:

- The information presented by the person, and/or their family or carer, and other agencies and people about their needs, personal outcomes, resources and risks.
- The professional judgement of the worker and their knowledge of the services or support which would be likely to be most useful to the individual and/or their family or carer, backed up by professional protocols and organisational duties to behave in a way which will protect the best interests of the individual.
- Local information and guidance about available services.
- Local protocols about assessment and care planning and support.

Further work will be needed in the next stage of the implementation of the Act to develop regulations and a code of practice to ensure that the definition of a barrier is clear. To inform these, the following definition of a barrier is proposed:
A person is facing barriers to achieving their personal well-being outcomes if:

- They do not have the personal resources\(^1\) or capacity to carry out (without assistance, prompting or supervision) personal care activities, household activities, caring responsibilities, maintain or develop family or other personal relationships, engage in work, training, education or volunteering or access necessary facilities or services in the local community or
- There is a significant risk to that person or to another person’s health, development or any aspect of their well-being.

This definition fits with the definition of well-being in the Act as being in relation to any of the following for all people:

- 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
- Suitability of living accommodation

And also for a child:

- Physical, intellectual, emotional, social and behavioural development
- ‘Welfare’ – as interpreted for the purposes of the Children Act 1989

And also for an Adult:

- Control over day to day life
- Participation in work

\(^1\) Some members of the technical group and attendees at subsequent stakeholder engagement events had concerns over the use of the term ‘personal resources’. One view is that it is central to the model to understand, and maximise the potential of, the resources available to the individual, from within themselves, their family and their community. Others were concerned that this would be interpreted exclusively as referring to financial resources or might lead to an over-estimation of the contribution that family and informal support carers can provide over time. The recommendation of the technical group is that the use and definition of this term should be an explicit question within the public consultation on the regulations and code of practice.
7.3 The ‘Can and Can Only’ Test

The proposed framework tries to keep the national guidance simple. The populations for whom the criteria would be relevant/applied would not be specified by age, the nature of their disability, nor by the risks normally associated with their circumstances, but through the detailed assessment of the individual’s situation by the person, and by their carers, in conversations with informed and skilled professionals. The conversations should be designed to gain insight into the person’s circumstances and strengths (and those of their family or carer) and would be the same type of conversation with everyone even if ‘no support required’ was the outcome. Therefore the process of assessment and care planning will place greater emphasis of the skills and knowledge of the worker and/or the multi-disciplinary team.

The Act requires local authorities to identify the extent to which care and support can contribute to the achievement of well-being outcomes or otherwise meet those needs. Therefore the first test of eligibility is whether or not a social care and support intervention can address the need, risk or barrier, or enhance the resource that will enable the individual to achieve the well-being outcome. If such an intervention cannot address the issue the question of eligibility does not arise. This is the ‘Can’ part of the ‘Can and Can Only’ Test and will help to prevent local authority social care being drawn into challenges it cannot address (such as provision of health care, employment, education etc.)

The second part of the test is the assessment that individual’s well-being outcomes cannot be met, or cannot be sufficiently met, solely through care and support co-ordinated by themselves, their family or carer, and so the individual requires support to co-ordinate that care and support or to manage it completely. This is the ‘Can Only’ Part of the Test and the Act makes it clear that when this test is satisfied, the local authority is under a duty to devise, in partnership with the person, a social care and support plan which will enable him/her to maintain or improve their well-being outcome - and to ensure the delivery of that plan.

Terms like ‘significant’ and ‘substantial’ are considered unnecessary in the regulations for the eligibility criteria except where there is a link to harm and risk, as the ‘Can Only’ test makes such terminology superfluous at best.
7.4 In summary

So, in summary, the preferred option is that the regulations and code of practice should stipulate that a comprehensive assessment should inform the judgement about eligibility for social care and support, and that this should be comprised of the following:

<table>
<thead>
<tr>
<th>Factors which must be considered in an assessment for eligibility</th>
<th>The criteria which must be applied when judging a person’s eligibility for social care and support</th>
<th>How barriers should be assessed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal well-being outcomes</td>
<td>The assessment must establish that the person can, and can only, overcome barriers to achieving their well-being outcomes by the local authority preparing a support plan, and, where this plan is agreed with the person, ensuring that it is delivered. Without the delivery of a care and support plan (or a support plan for a carer), the individual is unlikely to achieve or maintain, or to have the opportunity to achieve or maintain, a reasonable standard of health or development or their well-being, health or development is likely to be significantly impaired, or further impaired</td>
<td>The assessment must establish that, for example, the person does not have the personal resources or capacity to carry out personal care activities, household activities, caring responsibilities, maintain family or other personal relationships, engage in work, training, education or volunteering or access necessary facilities or services in the local community, or there is a significant risk to that person or to another person’s health, development or well-being.</td>
</tr>
<tr>
<td>Needs</td>
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<td>Risks</td>
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<td>Resources</td>
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<td>Barriers</td>
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This preferred option follows from, and is consistent with the SSIA report on Access to Care and Well-being in Wales accepted by the Deputy Minister in 2013.

The proposed framework is consistent with the duties in the Act to promote community and well-being services that are accessible and help people improve their lives, maintain or develop independence as much as possible.
The framework will support a model of social care that empowers individuals to build confidence in their ability to manage their own care (where appropriate) through improved information, knowledge and support and ensures that real control over services is available to those who need help to do this. The framework also recognises that some people will not be able to manage their own care and will need care and support managed and delivered for them.

This framework for eligibility supports and encourages the cultural change to a different way of working that is introduced through the Act. It prioritises early intervention and the taking of preventative action and supports a shift in approach from 'service-led' to 'citizen-directed' that is required by the new system for accessing and delivering care and support. It is outcome not service led and impels a shift away from the ‘cliff-face’ approach to eligibility that FACS promotes.

This is an approach to eligibility that acknowledges the shift towards co-production and multi-agency working, towards citizen voice and control. It supports a move away from the deficit model of care (“what is wrong?”) to an emphasis on strengths, capacity and personal resources (“what can I do? /how can I get help?”), and focuses on enabling services. It is consistent with the mental health model in that it is about reaching the individual’s outcomes, and with the social model in that it is about removing the barriers that prevent people achieving their outcomes.

People’s needs fluctuate and circumstances change and the assessment process must provide for professionals to look for and anticipate those changes. At any one time each individual will have needs for which they have sufficient resources to overcome barriers and achieve their personal outcomes and other needs which will require the design and delivery of a care and support plan, and the pattern of: “these needs I can meet/these needs I need help with” will vary over time and circumstance for each person. The framework recognises the reality of fluctuating needs and creates a model of eligibility that is responsive to changing circumstances. Eligibility is not conferred on the person, but on the need required to meet the outcome. In practice this recognition of fluctuating needs may require that the individual's circumstances are considered over such period of time as is necessary to establish an accurate indication of the person’s level of need.

Except where eligibility is automatic and conferred through status it is proposed that specific statements in the criteria to reflect the different characteristics of children, adults and carers would not be necessary as the determination of eligibility is based on a wide yet individually relevant set of assessment criteria. The principle is that the assessment should be suited to the needs of the person rather than the person being the subject of a pre-designed assessment structure. It is therefore also an approach to eligibility that supports the portability of care and support as required by the Act.
8 Implications for Regulations and Code of Practice relating to the provision of assessment and care and support planning.

This is a framework of eligibility that emphasises the role of proportionate assessment in working in partnership with people to build on their strengths, understand their needs, and identify the care and support that will enable them to achieve better well-being outcomes. It requires a comprehensive and holistic assessment of a person and their circumstances which the person will be able to engage with.

To deliver the recommended model of eligibility will require a process of assessment care planning and review that is consistent with the principles set out in Integrated Assessment, Planning & Review Arrangements for Older People (issued by the Minister for Health & Social Services in December 2013) particularly with regard to proportionality and responsiveness in the assessment process and supporting professionals to exercise their professional judgement working in partnership with people to agree solutions that are in the best interests of the individual and their families.

Well-being definitions are the starting point for framing individual outcomes through the assessment process. The framework is designed with the recognition that people’s needs fluctuate and circumstances change and the assessment process must provide for professionals to look for and anticipate those changes.

9 Summary and conclusion

This is an approach to eligibility that recognises the distinction between the local authority’s general duties to meet the well-being outcomes of its population (as set out in Part 2 of the Act) and the establishment of an enforceable right for the individual (as required through parts 3 and 4 of the Act). It clarifies that distinction by stating that if an individual’s well-being outcomes cannot be met through the general duties placed on the local authority then the individual has a right to the delivery of care and support through a care and support plan; where that is required to meet those outcomes.

The proposed eligibility framework encourages the local authority to meet its duties to provide or arrange for the provision of preventative services, to promote social enterprises, co-operatives, user led services and the third sector and to provide information, advice and assistance services in that the more an individual’s well-being outcomes can be met under these general duties the less that will need to be attended to through the individual right to the design and delivery of a care and support plan.
Determining eligibility is not about giving a right to any one service, it is about guaranteeing access to care and support where without it well-being outcomes could not be met.

The recommended option introduces a framework for eligibility which supports people’s rights to have respectful conversations about their well-being and to exercise a strong voice and control in decisions about their care. It is about identifying the right care and support, in the right place, at the right time.

It will ensure that people themselves are at the centre of decisions about their care and support and are enabled at all times to maintain their well-being. The approach is one that focuses on people’s capacities and personal resources, as well as on their needs and the barriers they face, to achieve the outcomes that maximise their well-being. The framework also recognises and attends to the transient nature of much eligibility such that whilst the status of the need as an ‘eligible’ need may change, the focus on access to the right support to attain well-being outcomes is maintained.

One aim of the Act is to concentrate on ensuring that people get the right support at the right time and are not distracted by having to worry about whether they are “eligible”. The model of eligibility recommended here is a model whereby the conversation between the person and the professional creates the eligibility status through the process of identifying how someone can access support. The need for help to get the support creates the eligibility and so mandates/legally requires the local authority to respond. There is no separate time-consuming and anxiety-inducing test of eligibility. This is not a test that people can fail.

June 2014
Appendix A

Possible Additional Guidance for Local Authorities and their Partners

The Technical Group was not mandated to begin drafting of regulations for eligibility through the Act. However the framework and model of eligibility recommended by the group produced some statements that may inform the development of those regulations and associated guidance and they are included here:

Eligibility for Social Care and Support

Principle:

The individual is facing barriers to achieving well-being outcomes which can, and can only, be overcome by the local authority devising, in partnership with the individual, a social care and support plan, and ensuring its delivery\(^2\).

Suggested Statements:

The individual’s well-being outcomes cannot be met, or cannot be sufficiently met solely through self-co-ordinated care and support and so the individual, and/or their family or carers require support to co-ordinate that care and support or to manage it completely.

Without the local authority devising, in partnership with the individual, a social care and support plan, and ensuring its delivery:

- The individual is/will be unable to achieve an identified well-being outcome as they are/will be unable to carry out basic personal care activities
- The individual is unlikely to achieve or maintain, or to have the opportunity to achieve or maintain, a reasonable standard of health or development or their health or development is likely to be significantly impaired, or further impaired
- There is a risk to the individual’s well-being as they are/will be unable to carry out basic household activities and daily routines.

\(^2\) The Technical Group’s recommendation is that the delivery of care and support must include personal care where this is needed.
- An adult is/will be unable to carry out caring responsibilities the adult has for a child

- Where the person is a carer, that person is unable to provide some of necessary care to the adult needing care, or is unable to provide care to other persons for whom the carer provides care.

- The individual is/will be unable to access support to maintain or develop family or other significant personal relationships

- The individual experiences loss of control, or is likely to experience loss of control, over their immediate environment and/or day-to-day life.

- The individual is unable to undertake, or is likely to be unable to undertake family and social roles and responsibilities that enable them to meet well-being outcomes for themselves or others.

- The individual’s social support systems are or could be at risk

- The individual is unable to attain or experience good physical and/or mental health

- The individual is/will be unable to access and engage in work, training, education, volunteering or recreational activities.

- The adult’s independence is at risk, or likely to become at risk.

- The individual is/will be unable to access community based services and as a consequence the individual’s identified well-being outcomes cannot/ will not be met or are less likely to be met

... and by the local authority devising, in partnership with the individual, a social care and support plan (to include where necessary provision of counselling, skills training, assistance, prompting or supervision), and ensuring its delivery, these outcomes can be met or are more likely to be met.
An Automatic Right to Care and Support

The individual has an automatic right to care and wellbeing support where it is necessary to safeguard the individual and/or others from risks to life and from abuse and neglect, or the risk of abuse and neglect; and in addition for children; harm or the risk of harm

An adult at risk is an adult who
- is experiencing or is at risk of abuse and neglect
- has need for care and support (whether or not the authority is meeting any of those needs) and
- as a result of those needs is unable to protect himself or herself against the abuse or neglect or risk of it

Harm in relation to a child means abuse or the impairment of:
- physical or mental health or
- physical, intellectual, emotional, social or behavioural development

The threshold that justifies compulsory intervention in family life in order to protect children is established as ‘significant harm’ (as introduced through the Children Act 1989) and the question as to whether harm is significant turns on the assessment as to whether or not the child’s health or development is comparable with that which could reasonably be expected of a similar child.

3 “abuse” means physical, sexual, psychological, emotional or financial abuse (and includes abuse taking place in any setting, whether in a private dwelling, an institution or any other place), and “financial abuse” includes—
(a) having money or other property stolen;
(b) being defrauded;
(c) being put under pressure in relation to money or other property;
(d) having money or other property misused

4 “neglect” means a failure to meet a person’s basic, physical, emotional, social or psychological needs, which is likely to result in an impairment of the person’s health or, in the case of a child, an impairment of the child’s development.
Appendix B

Testing against the Ministers requirements

The following requirements were noted by the Minister in the letter to the technical working group at its commencement, and the group considered that these had been addressed by the proposed model of eligibility.

<table>
<thead>
<tr>
<th>Ministerial Requirements</th>
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<tbody>
<tr>
<td>The process which enables statutory authorities to meet duty to promote the wellbeing of people who need care and support</td>
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<tr>
<td>The Act’s definition of wellbeing should be the starting point</td>
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<tr>
<td>A national framework consistently applied across Wales</td>
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<td>Right support, right place, right time</td>
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<tr>
<td>Wider support outside social care so greater number of people with needs supported in ways accessed outside eligibility criteria</td>
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<tr>
<td>The significance of eligibility in deciding if someone gets support is reduced</td>
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<tr>
<td>A model that most supports peoples access to community based preventative and early intervention services and ensures services are provided to those who need significant support and help with personal care and who are supported to retain control over the lives</td>
</tr>
<tr>
<td>Criteria should determine the point at which an individual will have an enforceable right to support from the local authority and the authority has a legal duty to provide or arrange care and support</td>
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<tr>
<td>As a minimum the criteria should ensure people who need help with tasks such as getting out of bed, dressing, eating, washing, bathing will be eligible</td>
</tr>
<tr>
<td>Be sensitive to and reflect the different characteristics of children, adults and carers</td>
</tr>
<tr>
<td>Reflect the requirement to meet the needs of those at risk or experience abuse or neglect</td>
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</table>
Appendix C

Example Case Studies

Case Scenarios to illustrate approach to eligibility of needs in the Care and Wellbeing Model:

Learning Disabilities

Mr. Evans; A 45 year old man with learning disabilities who has been living with an elderly parent who has perhaps been over protective and done everything for him may need some form of reablement programme to help him move to new accommodation and take more responsibility for looking after himself. He is unable to carry out basic personal care activities and may need help to develop social networks. He will have short term intensive eligible needs where he has become very dependent but have the potential to develop skills to make him more independent. He will receive community based services alongside managed services delivered through a care and support plan. Productive social work and wellbeing services should, over time, support Mr. Evans to develop such independence skills that his needs no longer become eligible and he is either fully independent or is supported solely by community based services.

Sensory Impairment

Mr. Davies recently presented with a serious sight impairment (blind) and may need to develop mobility, communication and life skills (e.g. meal preparation) from a rehabilitation officer. He may need some emotional support to come to terms with the fact that there is no further treatment available to improve his sight. Her may also need specialist equipment. Where each of these can be provided by Community based services - supporting Mr. Davies’ capacity to self-care - then Mr. Davies will not be regarded as having eligible needs. Should any of these services not be available or be insufficient to help Mr. Davies to meet his personal outcomes, then that need will become an eligible need and services will be provided through a care and support plan.

Older Person

Mr Jones is in hospital and his suitability for reablement service has been identified by hospital staff. Through a low key proportional assessment a reablement team identify needs and agree outcomes with Mr Jones and (carer) Mrs Jones. Mr. Jones has identified his personal outcomes:

1. I want to be able to wash and dress myself Independently
2. I want to be able to have a bath but need help to get in and out of bath
3. I want to feel confident enough to be able to walk to the local shops
4. I want to take up some of my social activities I have drifted from over the last few years

Reablement is seen as a community based, preventative service and Mr. Jones has no needs that require a managed care and support plan. At the review there is agreement that reablement has been a success and outcomes have been achieved. No further assistance is required. Mr & Mrs Jones are given information of how to get help should they require it in the future. Mr. Jones has received services that restore his level of functioning and without ever meeting the eligibility criteria for managed care and support.

Alternatively the review towards the end of the programme concludes that Mr Jones has recovered some measure of independence with support from the reablement programme but needs continuing care and support to help him with his personal care. Mr. Jones now meets the eligibility criteria and managed care and support services are delivered through a care and support plan. Community based services will continue where they are helping Mr. Jones towards his personal outcomes and meeting his needs.

Children & Family

Megan aged 6 lives with her mother and two year old brother. She receives additional support at school but bullies other children and is aggressive towards her mother. Mother is struggling to cope with Megan’s behaviour. The home is poorly furnished with no heating although there are toys for the children. Proportionate assessment is undertaken involving the manager of a children’s centre and a teacher: Practical advice is provided around managing behaviour and improving living conditions at home. These services are provided although neither Megan nor her family require managed care and support plan and their needs do not meet the eligibility criteria.

A Possible Scenario is that Mother improves her skills in managing Megan’s behaviour and Megan’s behaviour improves both at home and school. Megan is now making better progress at school. Mother has received help with furniture from a local charity. Contact ends as the family are achieving objectives and there is no need for formal social services input with a formal care and support plan.
An alternative scenario is that although safeguarding issues have not arisen there is no improvement in the family circumstances and there is a serious risk of family breakdown. **The family will meet the eligibility criteria** because it cannot meet their needs and outcomes without the authority providing care and support which will be managed through a care and support plan.

A third scenario is that there is no improvement in Megan’s behaviour at home or school and Mother is increasingly finding Megan’s behaviour very stressful to deal with. Mother takes Megan to school and admits to teacher that last night she struck Megan across the back of the head. **Safeguarding procedures are now applied.** Social services are now formally involved and more **intensive support is provided** and managed through a formal care and support plan. This does not mean that Megan and her family cannot access preventative services if they are still appropriate.

**Carer**

Mrs Lloyd approached the **Information, Advice and Assistance service** as she is experiencing a level of carer’s stress due to the caring role. Mrs Lloyd appeared tense and tired during the assessment but expressed that she did not feel that she required support from the general practitioner at this time. Mrs Lloyd stated that she had lost two stone in weight since May. However Mrs Lloyd states that when her husband gained weight so quickly they both went on a diet. It is now felt that her husband’s weight gain was due to fluid retention. Mrs Lloyd expressed that she had disturbed sleep but it was not clear if this was due to anxiety or that her husband woke during the night. Mrs Lloyd expressed that she was coping and that their general situation at home had improved as her husband’s health has improved.

Mrs Lloyd reported no difficulties with family or her husband’s relationship and expressed that children and grandchildren are all very supportive.

Mrs Lloyd is over the age of retirement and did not express an interest in education pursuits

Mrs Lloyd stated that she did not feel that she was experiencing financial difficulty due to the caring role. Mr and Mrs Lloyd have not had a financial assessment to maximise their income and appear to be frugal by nature. A benefits advice referral will be made.

Mrs Lloyd has clearly been experiencing a degree of carer stress and an exploration of methods to relax and enjoy social activity may be of benefit to her. Mrs Lloyd was given details of the activities of and contacts for the local Carers Support Group **which she felt confident in being able to access independently.**
Young Carer

Lee is a 14 year old male who is the sole carer for his single mother Sian. He provides all but personal care needs for his mum. Sian has a number of physical impairments leading to frequent medical interventions and mobility problems spending the majority of her time in her bedroom. Sian has also developed dependency on prescription drugs with additional side effects of heightened anxiety. Lee will frequently leave or not attend school and when in school Lee is frequently disruptive and challenging.

Lee is unable to meet his well-being outcome in relation to education and development without the provision of a support plan and so meets the eligibility criteria. But in this case the support plan involves the provision of care and support services to Lee’s mum. Care and Support services are provided for Sian during the day through a care and support plan and Sian is assisted to seek medical and psychiatric intervention to address her anxiety levels.
## Appendix D

### Membership of Technical Group on Eligibility for Social Care

#### Membership from Agencies External to Welsh Government

<table>
<thead>
<tr>
<th>Name</th>
<th>Role / Organisation</th>
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<td>Ceri Jackson</td>
<td>Vice chair of Age Alliance Wales and Director of RNIB</td>
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<tr>
<td>Beth Evans</td>
<td>Carers Wales</td>
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<tr>
<td>Steve Harris (and PA Debra Paynes)</td>
<td>Director of Dewis CIL and member of the Wales Alliance for Citizen Directed Care</td>
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<tr>
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<td>Age Cymru</td>
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<tr>
<td>Yvonne Rodgers</td>
<td>Barnardo’s Cymru</td>
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<tr>
<td>Chris Davies</td>
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<tr>
<td>Colin Turner</td>
<td>Head of Service; safeguarding and Family, Bridgend CBC</td>
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<td>Brigitte Gater</td>
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<td>Chris Humphrey</td>
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<td>Martin Semple</td>
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<td>Rachel Brown</td>
<td>Primary and Community Care Policy (Welsh Government)</td>
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<tr>
<td>Lynda Chandler</td>
<td>Integration Policy and Delivery (Welsh Government)</td>
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<td>Stephen Gear/Hannah Williams</td>
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