

Care and Support

# **Personal Budgets Policy**

Helping people to help themselves by making personalisation real

**Adult Operations**

**Essex County Council**

December 2014

FINAL / Version 1.0

## Document Control Sheet

<b>Title of Policy:</b>	Personal Budgets Policy
<b>Purpose of Policy:</b>	To provide the framework for resource allocation and delivery of personal budgets to adults with eligible assessed unmet needs in Essex. .
<b>Type of Policy:</b>	Operational policy
<b>Target Audience:</b>	All those involved in assessment, planning support, care management or review of adults receiving self-directed support services within Essex.
<b>Date policy approved:</b>	18 December 2014. Comes into force 1 April 2015.
<b>Review Date:</b>	This policy will be updated in line with implementation of the second phase of Care Act 2014 reforms that come into force in April 2016.
<b>This policy replaces:</b>	Personal Budgets Policy (May 2014)
<b>This policy should be read alongside:</b>	Assessment & Eligibility Policy Support Planning and Review Policy Charging Policy
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# Personal Budgets Policy

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# Personal Budgets Policy

## 1 Introduction

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The council has a statutory duty to assess any adult who appears to have needs for care and support and then to ensure that their eligible assessed unmet needs are met. Under the Care Act, everyone whose eligible assessed unmet needs are met by the council, must receive a **personal budget** as part of the support plan.

The personal budget represents the public money that the council would have to spend in order to meet the person's assessed, eligible needs, where those needs cannot be met from the person's own assets, informal sources of support or from within the community. The personal budget, in conjunction with the support plan, enables the person to exercise greater choice and take control over how their care and support needs are met. It means:

- Knowing how much money will be available to meet a person's eligible assessed unmet needs, both before support planning begins and after the support plan is agreed. This includes how much the local authority will pay and how much the person will contribute.
- Being able to choose from a range of options for how the budget is managed, including direct payments.
- Having a choice over who is involved in developing the plan for how the budget will be spent.
- Having greater choice and control over how the budget is used to purchase care and support.

Registered social work professionals have a professional duty to maintain a sound understanding of current legislation applicable to social care and to take account of relevant policy and guidance in their practice.

The main elements of the framework for personal budgets in Essex include:

<b>Assessment</b>	<p>A robust assessment of the individual's eligible assessed unmet needs for care and support from the council provides the evidence for calculating the individual's personal budget.</p> <p>The Assessment and Eligibility Policy covers this element of the process.</p>
<b>Resource Allocation System</b>	<p>The system of estimating the funds required to meet the eligible assessed unmet needs of the individual. The RAS generates an indicative personal budget which is based on the assessment, the costs of meeting eligible assessed unmet needs in Essex and the resources available to the council.</p>
<b>Support Plan</b>	<p>During the support planning process, individuals will be given an indicative personal budget – an estimated amount - to assist them in planning their support. Once the support plan is validated, the amount of the personal budget will be confirmed and the individual can use the money to meet their eligible assessed unmet care and support needs.</p> <p>The Support Planning and Review Policy covers this element of the</p>

	process.
<b>Personal Budget</b>	The amount of money required to meet the individual's eligible assessed unmet needs. People who have been offered a personal budget and have a validated support plan in place will be able to take the personal budget as a direct payment – either payable to themselves or to a third party – or as a managed service. Essex will also allow a combination of these options.
<b>Audit and monitoring requirements</b>	Arrangements for auditing and monitoring of personal budgets will be proportionate and risk-based. These will provide assurance both to the council and to the individual that funds are being used effectively in accordance with approved support plans.

## Helping people to help themselves by making personalisation real

Essex County Council is committed to delivering Adult Social Care in accordance with the Adult Operations Charter. Its approach will always be based on helping people to help themselves and in so doing to promote progression and maximise independence

Essex has signed up to Making it Real, demonstrating its commitment to personalisation and community-based support. Our goal is that people with eligible assessed unmet needs for care and support in Essex can say:

<b>Information and advice</b>	<p>"I have the information and support I need in order to remain as independent as possible"</p> <p>"I have access to easy to understand information about care and support which is consistent, accurate, accessible and up to date."</p> <p>"I can speak to people who know something about care and support and can make things happen."</p> <p>"I have help to make informed choices if I need and want it"</p> <p>"I know where to get information about what is going on in my community."</p>
<b>Active and supportive communities</b>	<p>"I have access to a range of support that helps me to live the life I want and remain a contributing member of my community."</p> <p>"I have a network of people who support me – carers, family, friends, community and if needed paid support staff."</p> <p>"I have opportunities to train, study, work or engage in activities that match my interests, skills, abilities."</p> <p>"I feel welcomed and included in my local community."</p> <p>"I feel valued for the contribution that I can make to my community"</p>
<b>Flexible integrated care and support</b>	<p>"I am in control of planning my care and support"</p> <p>"I have care and support that is directed by me and responsive to my needs."</p> <p>"My support is coordinated, co-operative and works well together and I know who to</p>

<p><b>Workforce</b></p>	<p>contact to get things changed.”</p> <p>“I have a clear line of communication, action and follow up”</p> <p>“I have good information and advice on the range of options for choosing my support staff.”</p> <p>“I have considerate support delivered by competent people”</p> <p>“I have access to a pool of people, advice on how to employ them and the opportunity to get advice from my peers.”</p> <p>“I am supported by people who help me to make links in my local community.”</p>
<p><b>Risk enablement</b></p>	<p>“I can plan ahead and keep control in a crisis”</p> <p>“I feel safe, I can live the life I want and I am supported to manage any risks”</p> <p>“I feel that my community is a safe place to live and local people look out for me and each other”</p> <p>“I have systems in place so that I can get help at an early stage to avoid a crisis.”</p>
<p><b>Personal budgets and self-funding</b></p>	<p>“I can decide the kind of support I need and when, where and how to receive it.”</p> <p>“I know the amount of money available to me for care and support needs, and I can determine how this is used (whether it’s my own money, direct payment or a council managed personal budget)”</p> <p>“I can get access to the money quickly without having to go through over-complicated procedures”</p> <p>“I am able to get skilled advice to plan my care and support, and also be given help to understand costs and make best use of the money involved where I want and need this.”</p>

## 2 The personal budget

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Everyone whose eligible unmet needs are met by the council must receive a personal budget as part of their support plan. The personal budget represents the public money that the council would have to spend in order to meet the person's assessed, eligible needs, where those needs cannot be met from the person's own assets, informal sources of support or from within the community. The amount is based upon the rates that the council would have to pay to secure that support. If individuals wish to purchase services or types of support to meet an eligible need that cost more than the council would normally pay to meet that type of need, the person is free to do so but will be expected to cover the difference themselves.

The personal budget is the money that is allocated to meet the eligible unmet needs identified in the assessment and recorded in the plan. An indicative amount is shared with the person at the start of the support planning process. The detail of how the budget will be used is set out in the support plan and the final amount is refined and confirmed through development and sign off of the plan.

There are three main ways that the person can take their personal budget:

<b>Managed account</b>	The personal budget is held by the council with support provided in line with the person's wishes.
<b>Individual service fund (ISF)</b>	The personal budget is held by a third party who manages it on the person's behalf and arranges support in line with the person's wishes. e.g. A trust fund, or a nominated lead provider
<b>Direct payment</b>	The person takes the personal budget as a cash payment and arranges their support in line with the agreed support plan.

In addition, the person may choose a mixed package that includes elements of some or all of these options.

Where a person chooses to have a Direct Payment but is unable to make the necessary support arrangements for themselves a person living in the same household may act as a broker on their behalf.

### Elements of the personal budget

The personal budget must be an amount sufficient to meet the person's assessed eligible unmet care and support needs and must reflect the cost to the council of meeting the needs that the council is under a duty to meet. As stated above, the amount is based upon the rates that the council would have to pay to secure support that would meet the eligible need. The council is not obliged to pay more than that rate.

<b>Financial contribution</b>	The personal budget must show the amount that the person must pay, following financial assessment. The remainder of the budget will be paid by the council.

<b>Other sources of funding</b>	The personal budget may also set out other public funds or benefits that the person is receiving, such as a personal health budget, if the person wants to present their budget this way.
<b>Brokerage fee</b>	<p>The council may charge a brokerage fee when arranging services for a person whose financial resources are above the financial threshold, but who has asked the council to arrange services for them.</p> <p>This fee is not part of the personal budget but may be presented alongside it to help the person to understand the total charges to be paid.</p>
<b>Top-ups</b>	A “top-up” is where a person or a third party on their behalf makes an additional payment to secure a service of their choice. If this costs more than the council would pay for such care, the top up does not form part of the personal budget. The sufficiency top up will be recorded on the person’s Care and Support plan.
<b>Intermediate care</b>	Intermediate care services, including <b>reablement</b> , must be excluded from the personal budget.

## 3 Calculating the personal budget

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It is vital that the process used to establish the personal budget is transparent so that people are clear how their budget was calculated, and the method used is robust, so that people have confidence that the personal budget allocation is correct and sufficient to meet their eligible unmet care and support needs.

### Key principles

<b>Transparency</b>	<p>Essex will make its allocation process publicly available as part of its general information offer and on request. This will ensure that people understand how the personal budget has been calculated.</p> <p>In line with national guidance, the cost assumptions on which the allocation is based should also be shared with the person so that they know how their personal budget was established.</p>
<b>Timeliness</b>	<p>People will be provided with an indicative personal budget – an estimate of the amount required – at the start of the support planning process. This will enable the person to plan how their eligible needs are met.</p> <p>This indicative amount will be adjusted based on decisions made during the development of the support plan to be the final amount of the personal budget recorded in the plan. It may go down as well as up.</p>
<b>Sufficiency</b>	<p>Under the Care Act, the personal budget must be sufficient to meet the person's needs that have been assessed as eligible and are not being met by a carer or other source of support.</p>

Under the Care Act the personal budget must be an amount equivalent to the cost to the local authority of meeting the person's eligible unmet needs. The personal budget must reflect local market intelligence and the costs of local quality provision to ensure that care appropriate to meet people's needs can be obtained for the amount specified in the budget. Where someone wishes to use a service or type of support to meet an eligible need that costs more than the council would normally pay to meet that type of need, they are free to do so but will be expected to cover the difference themselves.

### Resource Allocation System

The method used for calculating personal budgets must be consistent. In Essex, a resource allocation system (RAS) is the means by which an estimate of the amount of resource required to meet eligible unmet needs will be calculated in order to provide the individual with an indicative personal budget to guide development of their support plan. The purpose of the RAS is to provide an equitable and transparent way of allocating resources.

In Essex the RAS consists of three main components:

<b>Assessment</b>	The Assessment identifies the individual's care and support needs, of which the eligible needs are identified in line with the national eligibility framework. The council is not under a duty to meet any needs that are being met by a carer, for so long as the carer continues to do so.
<b>Allocation System</b>	A system to translate the eligible assessed unmet needs into points or units of need. The scale of points or units awarded is informed by the national eligibility criteria.
<b>Estimated budget calculation</b>	<p>The points or units of eligible assessed unmet need will be converted into an estimated budget. This is done by multiplying the points or units by an agreed rate.</p> <p>The rate(s) used are based on the cost of meeting eligible support needs, having regard to the available Essex County Council resources.</p>

The Council monitors the RAS to ensure that it remains equitable and transparent and allows individuals to meet their eligible unmet needs within available Council resources.

## Exceptions

The RAS cannot calculate an accurate indicative budget for complex cases that involve high levels of eligible unmet needs. In these cases it will calculate an indicative budget up to a maximum threshold that reflects the type and complexity. Cases that reach or exceed this threshold will be treated as an **exception**.

This does not mean that the Council will not fund support above this threshold. The Council has a statutory duty to meet the individual's eligible unmet needs regardless. However, such cases are likely to involve a higher degree of complexity and will require more careful consideration to ensure that the person's eligible needs are met appropriately.

## Validation

The Council must be satisfied that the support plan will meet the individual's assessed eligible needs in order to confirm the final amount of the Personal Budget, taking account of any needs that will be met by a carer or through other sources of support. The support plan will provide the evidence to establish the true cost of meeting that individual's eligible assessed needs. No money will be released to the individual until a validated support plan is in place. The **Support Planning and Review Policy** covers this element of the process.

## Disputes

Individuals have a right to challenge the council on the sufficiency of the indicative personal budget or the final amount. Disputes will be handled under the statutory complaints process.

## 4 Use of the Personal Budget

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A personal budget represents the funds required by an individual to meet their assessed eligible needs, excluding any needs that will be met by a carer or through other sources of support, in line with an approved support plan. People can choose for the personal budget allocation to remain with the council to arrange care and support on their behalf in line with their wishes or it can be placed with a third party provider on the same basis (individual service fund).

When someone has a personal budget they can take some or all of the budget as a direct payment. In addition, a person may choose a mixed package that includes some or all of these three approaches. The decision on how the budget will be used must be recorded in the support plan.

### Carer's Personal Budget

The carer's personal budget must be an amount that enables the carer to meet their eligible assessed unmet needs to continue to fulfil their caring role and takes into account the outcomes that the carer wishes to achieve in their daily life. This includes their wishes or aspirations in relation to employment, education, training or recreation. This includes funding for replacement care to allow the carer to take a break to maintain their physical, mental or emotional wellbeing.

Under the Care Act, a carer's need for support can be met by providing care to the person they care for. Decisions on which services are provided for the carer and which services are provided for the person they care for will have implications for whether a service is chargeable and who has to pay. Decisions will also have an impact on whose personal budget includes the cost of meeting those eligible unmet needs.

The council will consider a joint support plan and personal budget for an adult and their carer where their eligible unmet needs can be met concurrently, if both parties agree.

Where the adult being cared for does not have eligible assessed unmet needs, the carer will receive a support plan specifying how the carer's eligible unmet needs will be met and including a personal budget. In this case, replacement care costs have to be met by the carer. However, if the replacement care is chargeable, it is the adult needing care who would be charged because they are the direct recipient of the service. They therefore need to consent to the arrangement. If they do not consent, the council must seek to identify any alternative way of supporting the carer.

### Direct Payments

Direct payments are cash payments made to individuals and carers in lieu of services, for the purpose of meeting eligible assessed unmet needs. Provision of Direct Payments is governed by the Care Act 2014, Section 117(2C) of the Mental Health Act 1983, the Care and Support (Direct Payments) Regulations 2014 and by the Care Act Statutory Guidance.

The council must inform the person which of their assessed eligible needs could be met through provision of a Direct Payment at the start of the support planning process.

Direct Payments must be used to meet the assessed eligible unmet needs of the person, in line with their validated support plan and personal budget agreement. Payment and use of direct payments must also be in accordance with requirements set down in relevant legislation and regulations.

Further guidance on the permitted and prohibited uses of direct payments is contained in the Direct Payments Guidelines.

Essex's policy is to promote Direct Payments as the preferred means of delivering the personal budget and meeting individuals' assessed eligible unmet needs. The council believes that this is the best means to ensure that people have real control over the resources used to secure their care and support and enables them to make best use of the full range of formal and informal support available.

If the person chooses to take a Direct Payment, they assume the responsibility for organising and managing their own care, in line with the agreed support plan. The council will no longer be responsible for the direction or day to day organisation of those services. Essex will ensure that there is a range of assistance and support arrangements available to assist individuals to do this.

Direct Payments will be paid net of any financial contribution the individual is assessed as being required to make towards the cost of their support.

### Adults with capacity

Where the person has capacity to request a direct payment, the council must agree provided the following conditions are met:

<b>Capacity and consent</b>	The adult has capacity to make the request and, if they are nominating a person to receive the payments, that person agrees.
<b>Exclusions</b>	The council may not make a direct payment to people receiving treatment or rehabilitation for drug or alcohol misuse or to prisoners released on licence, as specified under the Direct Payments Regulations.
<b>Capability</b>	The adult or nominated person is capable of managing direct payments either by themselves or with support.
<b>Appropriate</b>	A direct payment is an appropriate way to meet the eligible unmet needs in question

### Adults lacking capacity

Where the person has been assessed as lacking capacity to request a direct payment, an authorised person can request the direct payment on the person's behalf. In this case the council must satisfy itself that the following conditions are met:

<b>Consent of authorised person</b>	A person authorised under the Mental Capacity Act 2005 supports the request.
<b>Exclusions</b>	Direct payments must not be made to pay family members to meet the eligible unmet needs of the person, unless the council considers this is necessary to meet the care needs of the adult or to provide

	administrative or management support in relation to the direct payment, as specified under the Direct Payments regulations.
<b>Best interests</b>	The council is satisfied that the authorised person will act in the adult's best interests in arranging for the provision of care and support.
<b>Capability</b>	The authorised person is capable of managing the direct payment either by themselves or with support.
<b>Appropriate</b>	A direct payment is an appropriate way to meet the eligible assessed unmet needs in question

The council must provide the person making the request with a written explanation if it decides to refuse the request. The decision can be appealed through the complaints process.

## 5 Audit and monitoring

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The council must be satisfied that the direct payment is being used to meet the eligible unmet care and support needs set out in the plan. The council also has a responsibility to ensure that public money is spent and accounted for appropriately. A personal budget is public money provided for the statutory purpose of meeting an individual's assessed, eligible needs. Essex therefore requires a robust and flexible policy of auditing Direct Payments to give assurance that individuals are achieving the best possible outcomes within the available resources and that funds are being spent appropriately.

The council must review the direct payment within the first six months of making the first payment. Thereafter the council must review the payment no later than every 12 months.

In circumstances where individuals manage their own budgets the Council requires a consistent and thorough approach to record-keeping that is proportionate to the needs of the individual.

### Audit and Monitoring Requirements

The main elements that support audit and monitoring of personal budgets include:

<p><b>Personal Budget Agreement</b></p>	<p>To receive a Personal Budget as a cash payment (ie a Direct Payment), the individual must enter into a formal contractual agreement with Essex County Council.</p> <p>The contractual arrangements between the Council and the individual must be established in a formal, written Personal Budget Agreement.</p>
<p><b>Separate Bank Account</b></p>	<p>All individuals, not using the Council's pre-paid arrangements, but receiving Direct Payments are required to set up a separate bank account for receipt and maintenance of these funds, unless the Council agrees to make an exception.</p> <p>Normally, the one exception the Council will make is where the individual opts to use a recognised payroll service that meets the Council's monitoring requirements.</p>
<p><b>Records</b></p>	<p>Individuals will be required to keep records of how they have spent their Personal Budget and submit these to the Council for monitoring as required.</p> <p>Individuals receiving a high level of Direct Payment, or who are deemed to present a higher risk, may be subject to enhanced monitoring arrangements.</p> <p>Records may include bank statements, invoices and receipts, payroll records or any other relevant documents specified by the Council.</p>
<p><b>Financial</b></p>	<p>Direct payments will be made net of any financial contribution the individual is assessed as being required to make towards the cost of</p>

<b>Contributions</b>	support for their eligible unmet needs.
<b>VAT</b>	Essex County Council is unable to recover VAT on goods and services which are purchased via Direct Payments. Any goods and services purchased are regarded as being purchased directly by the individual who is therefore liable for any VAT incurred.
<b>Contingency</b>	Up to four weeks' funds may be set aside for use as a contingency fund.  Individuals may also plan for savings to make larger one off purchases or to fund more expensive services, as long as this is planned and agreed in the support plan.
<b>Treatment of surplus</b>	The council will seek to recover money from the individual if they have a surplus of more than eight weeks' funds in the direct payment bank account and this is not part of any contingency fund that has been agreed with us (see above).

## Suspension and termination of Direct Payments

Essex County Council retains the option of taking over the management of the individual's care and support arrangements either at the individual's request or in the light of a change in circumstances. This may be necessary if the individual is no longer able to manage their Direct Payment; is admitted to hospital for a significant period or it is otherwise in their best interests, in line with Mental Capacity Act criteria.

The council must ensure that there is no gap in the provision of care support. In such cases, the council will initiate a review of the individual's needs which will include a review of the Personal Budget arrangements and any existing agreements. In doing so, the council will have due regard for any contractual obligations on the part of the individual and the promotion of continuity of support arrangements.

Personal Budget Agreements may be suspended or terminated as follows:

<b>By the individual</b>	<p>The individual can choose to terminate a Direct Payment at any time. This may be because they no longer wish to receive direct payments; they are no longer able to manage the direct payment or they no longer need the support for which the direct payment is made.</p> <p>If the individual chooses to terminate a Direct Payment and requires Essex County Council to arrange alternative services, the council will require a minimum of four weeks' notice to make appropriate arrangements.</p> <p>If an individual chooses to terminate a Direct Payment, the council will initiate a review to determine how best to meet their eligible unmet needs.</p>
<b>By Essex County Council</b>	<p>Essex County Council may suspend or terminate a Direct Payment:</p> <ul style="list-style-type: none"> <li>It is apparent that the person is no longer capable of managing</li> </ul>

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	<p>the direct payments whether on their own or with support</p> <ul style="list-style-type: none"><li>• The person no longer needs the support for which the direct payment is made</li><li>• If one or more of the qualifying criteria are breached by the individual</li><li>• If the council is no longer satisfied that the authorised person is acting in the best interests of the person.</li><li>• For reasons of illegal or fraudulent use or misuse of a Direct Payment</li></ul> <p>In such cases, Essex County Council will put a managed service in place to ensure that the individual's assessed eligible unmet needs are met. The council will also initiate a review to consider revision of the support plan.</p> <p>The notice required will depend on the individual circumstances of each case and the evaluation of any risks or other relevant factors.</p>
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## Misuse and Fraud

It is a requirement that personal budgets are used to meet the assessed eligible unmet needs of the individual, in accordance with any conditions imposed in the validated support plan and / or Personal Budget Agreement and relevant policy and guidance.

In cases of misuse or fraud relating to the use of a personal budget or direct payment, Essex County Council will take action to recover all or part of the monies, where appropriate. In serious cases, the individual may no longer be eligible for a Direct Payment in future.

## Disputes

Any disputes in relation to the allocation or provision of personal budgets will be subject to Essex County Council's statutory complaints procedure.

If the recipient of a personal budget or direct payment has a complaint about services they have purchased independently, they should address this with the service provider or employee concerned.

# A1 Wellbeing

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Under the Care Act, the general duty of the council is to promote the wellbeing of the individual. The wellbeing principle underpins the whole of the Care Act and its associated regulations and guidance. Specifically, it applies in all cases where the council is carrying out a care and support function or making a decision in relation to a person. It applies to adults, carers and, in some circumstances, to children in transition, their carers and to young carers. The wellbeing principle applies equally to people who do not have eligible needs if they come into contact with the care system.

## Definition

The dictionary definition of “wellbeing” is “the state of being comfortable, healthy or happy”. It is necessarily a broad concept and in relation to Care Act functions is described as relating to the following nine areas in particular:

- Personal dignity (including treatment of the individual with respect);
- Physical and mental health and emotional wellbeing;
- Protection from abuse and neglect;
- Control by the individual over day to day life (including over care and support provided and the way it is provided);
- Participation in work, education, training or recreation;
- Social and economic wellbeing;
- Domestic, family and personal;
- Suitability of living accommodation;
- The individual’s contribution to society.

## Promoting wellbeing

Promoting wellbeing means actively seeking improvement in the aspects of wellbeing described above when carrying out a care and support function in relation to an individual. This applies at any stage of the process from providing information and advice to reviewing a support plan.

There is no set approach. Promoting wellbeing will depend on the individual’s needs, goals and wishes. The council should consider each person’s case on its own merits, based upon what the person wants to achieve and how the council’s actions will affect their wellbeing.

All the nine aspects of wellbeing are of equal importance. However it is likely that some aspects will be more relevant to one person than another. The council should adopt a flexible approach that focuses on those aspects that matter most to the person concerned.

In addition to the wellbeing principle, the Care Act sets out a number of other key principles which local authorities must have regard to when carrying out the same activities or functions:

- a. The importance of beginning with the assumption that the individual is best placed to judge the individual’s wellbeing;
- b. The individual’s views, wishes, feelings and beliefs;
- c. The importance of preventing or delaying the development of needs for care and support and the importance of reducing needs that already exist.
- d. The need to ensure that decisions are made having regard to all the individual’s circumstances;

- e. The importance of the individual participating as fully as possible;
- f. The importance of achieving a balance between the individual's wellbeing and that of any friends or relatives who are involved in caring for the individual;
- g. The need to protect people from abuse and neglect;
- h. The need to ensure that any restriction on the individual's rights or freedom of action that is involved in the exercise of the function is kept to the minimum necessary for achieving the purpose for which the function is being exercised.

Neither these principles nor the wellbeing principle require the council to make a specific decision or undertake a particular action. The steps the council should take will depend entirely on the circumstances.

## A2 Statutory duties and national policy

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This appendix briefly explains the current legal and policy context for delivery of adult social care services. This is an overview of the main requirements and should not be taken as a comprehensive summary of all the council's legal duties.

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<b>Assessment of needs for care and support and Carer's assessments</b>	<p>Local authorities have a statutory duty to carry out an assessment of need for any adult or carer who appears to have any level of care and support services and determine whether any of those needs are eligible for support from the local authority. (<a href="#">Care Act 2014</a>, sections 9 &amp; 10).</p> <p>The <a href="#">Care and Support (Assessment) Regulations 2014</a> and Department of Health <a href="#">Care and Support Statutory Guidance</a> (2014) impose further requirements in relation to the Assessment</p>
<b>Eligibility</b>	<p>Eligibility for a service provided by the local authority must be determined following an assessment of need in line with the national eligibility framework. This is prescribed by the <a href="#">Care and Support (Eligibility Criteria) Regulations 2014</a> and subject to the <a href="#">Care and Support Statutory Guidance</a> (2014) (Chapter 6)</p>
<b>Prevention duty</b>	<p>Under Section 2 of the <a href="#">Care Act</a>, the local authority has a duty to take action to prevent or reduce an adult's or carer's needs for care and support.</p>
<b>Ordinary Residence</b>	<p>Sections 39 to 41 of the <a href="#">Care Act</a> and the associated <a href="#">Care and Support (Ordinary Residence) (Specified Accommodation) Regulations 2014</a> provide the legal framework for determining where an adult is ordinarily resident for the purpose of identifying where responsibility lies between different local authorities for the funding and / or provision of care for adults with eligible assessed needs. There is additional guidance in the <a href="#">Care and Support Statutory Guidance</a> (Chapter 19)</p> <p>The <a href="#">Care and Support (Ordinary Residence Disputes etc) Regulations 2014</a> provide the framework for resolving disputes between local authorities.</p>
<b>Duty and powers to meet needs</b>	<p>Once a local authority has undertaken an assessment and concluded that a person has needs that meet the national eligibility criteria, then the authority <b>must</b> meet those needs (<a href="#">Care Act section 18</a>)</p> <p>The local authority has a <i>power</i> to meet needs without carrying out an assessment if those needs are urgent. It also has a <i>power</i> to meet needs that are not eligible under the national eligibility criteria if it chooses to do so. (<a href="#">Care Act section 19</a>)</p>
<b>Mental Capacity</b>	<p>The Mental Capacity Act 2005 (MCA) applies to anyone over 16 who is unable to make all or some decisions for themselves. The MCA should be considered by everyone involved in the assessment or provision of care, treatment and support for people who may lack capacity.</p> <p>The MCA provides the framework for best interests decisions, lasting powers of attorney, court appointed deputies, deprivation of liberty safeguards, the Court of Protection</p>

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Guidance on all aspects of the Mental Capacity Act and links to the Office of the Public Guardian can be found on the [Ministry of Justice site](#).

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### **Safeguarding**

Local authorities have overarching duties to safeguard both children and vulnerable adults from abuse. It is everyone's responsibility to recognise suspected or actual abuse and to take appropriate action.

The [Care Act 2014](#) provides the statutory framework for adult safeguarding and for Safeguarding Adults Boards. Chapter 14 of the [Care Act Statutory Guidance](#) covers safeguarding and replaces the *No Secrets* guidance.

An updated [Statement of Government Policy on Adult Safeguarding](#) (May 2013) sets out the key principles for all agencies involved in safeguarding and how these should translate into outcomes for individuals.

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### **Equality**

The Equality Act 2010 requires all organisations that provide a service to the public to make "reasonable adjustments" to those services to ensure they are accessible for disabled people. Reasonable adjustments are not limited to removing physical barriers to accessing services but include changes to the ways in which services are delivered and ensuring that policies, procedures and staff training all enable services to work equally well for people with disabilities.

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### **Personalisation**

Government policy is that everyone who receives social care support, regardless of their level of need, in any setting, will have choice and control over how that support is delivered. This means that individuals exercise control over their care. Personal budgets, preferably as direct payments, are provided to all eligible people. Information about care and support is available for all local people, regardless of whether or not they fund their own care.

The Department of Health Vision for Adult Social Care, [Capable Communities and Active Citizens](#) (2010) describes the Government's policy in this area. [Think Local Act Personal](#) (TLAP) is the national partnership responsible for driving forward personalisation and community-based care. TLAP's framework, [Making it Real](#) sets out the main characteristics that people expect from a truly personalised service.

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### **Direct Payments**

Direct Payments are cash payments in lieu of a service made directly to individuals with eligible assessed unmet needs and carers so that they can purchase the assistance or services they need, instead of the authority providing those services.

Sections 31 to 33 of the [Care Act](#) provide the legal framework for direct payments, along with the Care and Support (Direct Payments) Regulations 2014. Chapter 12 of the [Care and Support Statutory Guidance](#) provides additional guidance.

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