

Factsheet 41 August 2009

Local authority assessment for community care services

About this factsheet

This factsheet considers the right to an assessment and associated rights to the provision of services from local authorities for older people (aged 60 and over), including the rights of carers to have an assessment of their needs. It should be read in conjunction with Age Concern's other factsheets on residential and non-residential care services.

The information in this factsheet is correct for the period April 2009 – March 2010. Capital limits and other figures are expected to increase again in April 2010 but rules and figures sometimes change during the year.

This factsheet describes the situation in England. There are differences in the rules for funding care in a care home in Northern Ireland, Scotland and Wales. Readers in these nations should contact their respective national Age Concern offices for information specific to where they live – see section 17 for details.

For details of how to order other Age Concern factsheets and information materials mentioned inside go to section 17.

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1 Recent developments

- On 1 April 2009 a new, joint, complaints system for health and social care was introduced. The Local Government Ombudsman still provides a further means of complaint should this be required.
- On 1 April 2009 the Care Quality Commission took over the work of the Commission for Social Care Inspection as the main regulator for health and social care standards. It also took over the work of the Health Care Commission and the Mental Health Act Commission.
- The *Mental Capacity Act 2005 Deprivation of Liberty Safeguards* came into force in April 2009.
- A new document called *Fairer contributions guidance – calculating an individual's contribution to their personal budget* has been introduced by the Government. This guidance supplements the current 'fairer charging' guidance and provides local authorities with a model for calculating a person's contribution to their personal budget. Local authorities providing personal budgets should implement this guidance by March 2010.
- The Government is currently (August 2009) consulting on new draft guidance on eligibility for adult social care within the policy context of personalisation, prevention and the planned transformation of adult social care.

2 Introductory information

When we use the words '**local authority**' or '**Council**' in this factsheet we mean whichever of the following applies to you:

- the County (such as Shropshire or Devon)
- the Metropolitan Borough (or District) (such as Sandwell or Tameside)
- a London Borough (such as Haringey or Sutton)
- the City of London
- the Unitary Authorities (which have taken the place of some counties such as North West Somerset – formerly part of Avon County Council; or Hartlepool – formerly part of Cleveland County Council).

The **social services department** is part of your local authority, and is responsible – among other duties – for assessing people’s need for ‘community care services’, arranging or providing these services, and providing financial support for those who need places in care homes. The social services department should be in your local telephone directory under the name of the local authority. Your town hall or council offices, Citizens Advice Bureau and local Age Concern will also be able to tell you how to contact social services.

In the NHS, Primary Care Trusts (PCTs) are responsible for meeting the health needs of local populations by arranging for the provision of services such as GPs, dentistry, district nurses and NHS hospitals (also called trusts) in their areas. Your PCT area may be different from your local authority area – these two bodies often have different boundaries. You can obtain details of your Primary Care Trust by asking your GP or Citizens Advice Bureau. Care Trusts have been set up in some areas in England to commission and provide both NHS and social care services in the areas in which they operate.

3 **Local authority assessment**

Before the local authority social services department can assist you, it must first carry out an assessment of your care needs – a ‘needs’ assessment or ‘care’ assessment.

Age Concern’s Factsheet 24, *Self-directed support: direct payments, personal budgets and individual budgets*, has information on the Government’s ‘personalisation’ agenda, which includes new approaches to assessment and is intended give greater choice and control to service users.

In the past, local authorities might have carried out assessments independently of other bodies that might also have responsibility towards an individual. The Government has now taken steps to encourage those bodies to work together where this might benefit the person concerned.

Under the Government's Single Assessment Process for Older People (SAP) the agencies responsible for assessing your social care, health, housing and other needs should work together to reduce duplication. Local authorities and local health bodies should have introduced procedures for sharing information so that you do not have to give your basic details more than once. Government guidance instructed authorities to examine their existing systems against the requirements of the SAP, as set out in the guidance, and implement action plans with the aim of being compliant with it by April 2004. However in some areas the SAP has still not been implemented.

The SAP does not replace local authorities' existing responsibilities and your legal entitlements to help from social services are unchanged.

If the SAP has not yet been implemented in your area, the person from the local authority who assesses you should make any health needs known to your family doctor (GP) or to another member of the primary care team such as a district nurse, chiropodist or physiotherapist. If you only need health care, you should approach your family doctor or other health worker. Age Concern Factsheet 44 *NHS services*, describes the type of services that may be available through your doctor's practice.

After the care assessment, the local authority will decide whether or not it should provide or arrange community care services for you under its eligibility criteria. Each authority sets its own eligibility criteria but these should comply with *Fair Access to Care Services (FACS)* guidance, issued by the Government to promote fairness and consistency in eligibility criteria and assessment processes.

Having established that your identified needs meet FACS criteria, the local authority then has duty to arrange or provide this service for you. It will usually carry out a financial assessment to establish how much you should contribute towards the cost of those services.

A local authority can take its likely resources into account when setting the eligibility criteria it uses to establish who should receive services. However, once an individual has been assessed as needing a service under those criteria, a temporary or short-term lack of resources is not a valid reason for failing to provide the service (*R v Gloucestershire County Council and the Secretary of State for Health ex parte Barry 1997*, *R v Sefton MBC ex parte Help The Aged, 1997*).

Point of law

Where an Act of Parliament has given the authority a **duty** to act under certain circumstances or to make decisions in a particular way it **must do so**. This may mean that service users concerned have a right to receive that service, or it might mean that councils have to take certain things into account when they make a decision. In other cases Acts of Parliament say that the council **may** provide services generally for people in its area but allow the council **discretion** about whether to do so for particular individuals. Users do not have a right to receive those services.

Sometimes the Government issues guidance to councils. This is not legislation, but if it is called 'section 7 guidance' issued under section 7 of the 1970 Local Authority Social Services Act, councils **must follow it** unless there is a good reason not to do so. An example of section 7 guidance is the *Fair Access to Care Services* guidance.

4 What are community care services?

Community care services provided by the local authority can include:

- home help or home care
- respite care
- day care
- night-sitting services
- care in a care home
- provision of aids to help with ordinary tasks of daily living
- meals on wheels.

Local authorities can directly provide services themselves or make arrangements for private or voluntary sector organisations to provide care on their behalf.

The local authority also has the power to give people money (direct payments) to buy their own community care services once they have been assessed as needing help. It is compulsory for local authorities to offer direct payments to older people who meet the necessary criteria. You do not have to use direct payments if you would prefer the local authority to arrange services for you.

Age Concern's Factsheet 24, *Self-directed support: direct payments, personal budgets and individual budgets*, explains direct payments in more detail. It also includes information on the introduction of personal and individual budgets. These are similar to direct payments in that the aim is to promote service user choice and control over how identified needs for social care services will be met. However, an individual budget is intended to cover more than just personal social care and may include funding from a number of support services, for example from the Supporting People scheme.

Personal budgets are intended to include only social care funding. They do not cover the funding and provision of residential care services at present.

These are all part of a major Government drive to 'personalise' service provision through its Transforming Adult Social Care agenda. One of the main elements of this new initiative is the variety of ways it is possible to arrange the funding of services depending on the needs and wishes of the service user.

Intermediate care services are short-term care services that can be provided at home or in a care home and can involve both health and social services. They are intended to prevent people from having to go into hospital or remain in hospital unnecessarily. Further information on intermediate care can be found in Age Concern's Factsheet 20, *NHS continuing healthcare, NHS-funded nursing care and Intermediate care*.

An older person's needs might include housing and transport. In practice, such needs are not generally met under community care provisions but they could be. For example, it would be possible for social services to assist you with transport to a luncheon club instead of providing you with meals at home. The council might also provide you with more suitable housing on the basis of your community care needs even though you might not be a high priority on the council's housing department waiting list.

A 1998 High Court judgement, *R v Bristol City ex parte Penfold*, confirmed this, ruling that local authorities can provide housing under section 21 of the National Assistance Act 1948. Housing departments are being encouraged to work more closely with the agencies responsible for meeting social and health care needs.

5 **The local authority's duty to assess**

There are three different circumstances under which your local authority must carry out a care assessment. These are set out in Acts of Parliament:

- if you appear to the local authority to be in need of a community care service (NHS and Community Care Act 1990, section 47)
- if you are disabled (NHS and Community Care Act 1990, section 47; and Disabled Persons (Services, Representation and Consultation) Act 1986, section 4
- if you help to look after someone else (Disabled Persons (Services, Representation and Consultation) Act 1986, sections 4 and 8; Carers (Recognition and Services) Act 1995, section 1; Carers and Disabled Children Act 2000); Carers (Equal Opportunities) Act 2004.

In practice this means that if you think you might need a community care service, you can ask the local authority for an assessment of your needs. You can also ask if you are disabled. If you are already receiving a service and you feel that your needs have changed, you can ask for another assessment. If you are caring for someone else, you can ask both for their and your own care needs to be assessed. Even if you are not actively 'caring' for someone you can ask for an assessment on their behalf – for example, on behalf of a relative or neighbour – although the social services department may want to make sure that you have the person's permission to do so.

5.1 **If you 'appear to be in need' of community care services**

Section 47 of the NHS and Community Care Act 1990 says that you should have a care assessment if it appears to your local authority that you may be in need of a community care service which it may arrange or provide.

Community care services are those defined in the NHS and Community Care Act 1990 (see section 3).

This wording is important because it means that when local authorities are deciding whether they will offer you an assessment, they must only take into account whether you might need one or more of the community care services that they have the power to provide or arrange. Local authorities must therefore undertake care assessments of those who are seeking care services that the authority has the power to provide or arrange even if it is not currently doing so. This was confirmed in the legal judgement referred to in section 3 *R v Bristol City Council ex parte Penfold*, 1998. Local authorities are not obliged to offer a care assessment for community care services to someone who has no difficulty carrying out the usual tasks of daily life for themselves.

The *Penfold* judgement also confirmed that the council cannot refuse to assess your needs on the grounds that you would have to meet the full cost of any care provided.

5.2 If you are disabled

Section 47 of the NHS and Community Care Act 1990 says that if, during an assessment of someone who 'appears to need' community care services, the person is found to be disabled, the local authority must assess the person for their needs under the Disabled Persons Act 1986 at the same time as they are assessed for their need for community care services.

If your local authority has not done this – or has not told you that it has done so – you should ask why. If you are disabled, you should tell the local authority of your disability when you ask for an assessment.

Some older people are registered with the local authority as having a disability. You do not have to be registered to have a care assessment, but you do have to meet the definition of disability as set out in legislation. Most older people who need help because of mental disorder or because of chronic illness or disability – such as arthritis, effects of stroke, blindness or loss of hearing – will count as 'disabled' for these purposes.

The Royal Association for Disability and Rehabilitation (RADAR) and the Equality and Human Rights Commission can provide further information for people with disabilities (see section 16 for further details).

Definition of the term 'disabled'

Section 2 of the Chronically Sick and Disabled Persons Act 1970 provides a definition of disability, which dates back to the National Assistance Act 1948. A definition of mental illness, described in law as mental disorder, is provided in section 1 of the Mental Health Act 1983. Under these definitions, you have a right to services if you:

- have a substantial and permanent disability
- are blind or partially sighted
- are deaf or hard of hearing
- are mentally ill
- have a learning disability.

5.3 If you help to look after someone else

A carer is anyone who helps to look after another person – for example, a husband or wife (spouse), or another relative, or a friend or neighbour.

Section 8 of the Disabled Persons Act 1986 says that when assessing disabled people for services under section 2 of the Chronically Sick and Disabled Persons Act 1970, local authorities must take account of the ability of the carer to continue to provide care on a regular basis. The person who carries out your assessment should normally ask your permission before talking to your carer about your needs.

Your carer can also ask for their own care needs to be assessed when your care needs are being assessed or reassessed. This right is set out in the Carers (Recognition and Services) Act 1995, and applies to anyone who provides, or intends to provide, a substantial amount of care on a regular basis. The Carers and Disabled Children Act 2000 extends this right, giving carers the right to have their needs assessed even if the cared-for person does not want to be assessed. Carers can also receive direct payments under the same legislation. The Carers (Equal Opportunities) Act 2004 requires local authorities to inform carers of their right to an assessment. Authorities should take carers' work, study and leisure interests into account when carrying out the assessment. Further information for carers can be obtained from Carers UK – see section 16.

5.4 If the local authority refuses to assess your care needs

Some local authorities may 'screen' people before agreeing to carry out an assessment.

This can take the form of asking a few questions on the telephone to establish whether the person's needs might qualify them for help from social services. The FACS guidance, confirming earlier case law, instructs authorities not to over-use such processes: 'In exercising this judgement councils should set a **low threshold** [in ascertaining potential need for community care services], and avoid screening individuals out of the assessment process before sufficient information is known about them'.

The local authority cannot have a policy of refusing all requests for a particular service without considering the particular circumstances of those requesting help. This was confirmed in an appeal to the High Court where a council had made a general decision not to arrange holidays for people who were disabled (*R v. Ealing Borough Council ex parte Leaman 1984*).

An individual's financial circumstances should have no bearing on whether the local authority carries out an assessment or not.

If you are refused an assessment and you feel that your needs have not properly been considered, you should write to state your case, and ask for the decision to be reconsidered. Make sure your local authority is fully aware of your situation and has all the relevant information. For example, if you are disabled, make sure that you have explained this to the local authority. If your local authority still refuses to assess your care needs, ask it to confirm this decision to you in writing, setting out its reasons for refusing.

See section 14 for your options if you are in this situation.

6 Finding out about assessments

What next

The first step in obtaining help from the local authority social services department is to ask for an assessment of your needs. Look in the local telephone book for contact details or if you cannot find them ask at the council's main office or the local Citizens Advice Bureau.

In areas with two-tier local government the county council is responsible for social services.

Each local authority has its own assessment procedure. Find out how assessment works in your local authority. This information is available in a long-term care charter called *Better care, higher standards* and each local authority produces its own charter. You should find it at the social services department, a hospital social services department, the Citizens Advice Bureau, or perhaps in the library or the GP's surgery. It should tell you:

- who will be eligible for assessment
- how the assessor will decide what services should be provided
- how and where to apply for an assessment
- how long you might have to wait for an assessment
- which needs the local authority has said it will be able to meet
- how to make representations or complaints.

The above information should be available in an appropriate form for everyone in your community, including people who are blind or partially sighted, and people who only speak or read languages other than English. If you cannot obtain this information, you should complain to the social services department, or contact your local councillor. Your local Age Concern may be able to help you find out more about assessment.

6.1 **How quickly must the assessment be carried out?**

There are no national rules on how quickly a local authority must carry out a care assessment following your request but many local authorities set and publish their own standards, which should also be published in the *Better care, higher standards* charter. To promote improved performance by local authorities, the Government has introduced performance indicators under which local authorities should work towards starting all assessments within 48 hours and completing them within 28 days, with all services put in place within a further 28 days.

Different rules apply to the discharge of hospital in-patients. If you are currently in hospital, Age Concern Factsheet 37, *Hospital discharge arrangements*, explains how the process leading up to your discharge from hospital should be managed.

6.2 Different levels of assessment

The Single Assessment Process identifies four types of assessment requiring differing levels of involvement by social services or health staff, or both:

- contact
- overview
- specialist
- comprehensive.

Contact assessment refers to a contact between an older person and health and social services staff where basic personal information might be collected and any significant needs identified or suspected.

An **overview assessment** would be more wide-ranging, exploring the person's needs in the context of some, or all, of the 'domains' or subject areas, set out by the SAP. These domains are user's perspective, clinical background, disease prevention, personal care and physical wellbeing, senses, mental health, relationships and social needs, safety and immediate environment and resources.

A **specialist assessment** might be the more detailed examination of a specific need.

A **comprehensive assessment** is an in-depth assessment where, for example, an overview assessment might not suffice. It may be carried out by more than one person – for example by a nurse and a physiotherapist, as well as the person from the social services department.

If your local authority has not yet fully implemented the SAP guidance it may use its own 'levels' of assessment, depending on what they think your needs are likely to be.

6.3 Where will the assessment take place?

There is no national rule about where the assessment should take place.

Depending on your circumstances, it might best be carried out in your own home or undertaken in hospital and then followed up at home as appropriate. An initial assessment could also be made at a social services office, day centre or resource centre.

There may be arrangements to carry out assessments at your GP's surgery, or at the local health clinic. For some people in hospital it may be appropriate to do part of the assessment in their own home, to see how they will manage on their return. Age Concern Factsheet 37, *Hospital discharge arrangements*, has more information for people in hospital.

7 The assessment process

The assessment process should consist of three parts:

- assessment of needs and circumstances
- identification of needs that should be met by the local authority under its eligibility criteria (ie, decision to provide services)
- financial assessment as appropriate.

These stages should be undertaken separately, although in practice this may be difficult to distinguish. The local authority should not take the individual's finances into account at an earlier stage and use this as a reason not to arrange services. The FACS guidance advises that, 'the carrying out and completion of a community care assessment should not be contingent on whether or not an individual can pay for care services. With respect to individuals receiving services at home, a council should arrange those services irrespective of the resources or capacity of the service user, if that is what the service user wants to do'.

The authority also has a responsibility to arrange care in a care home for individuals who are assessed as requiring it but to whom it is not otherwise available (see section 10).

Despite having to comply with the FACS and SAP guidance, each local authority will have its own approach to assessment. The complexity of the assessment offered should reflect the individual's needs and circumstances and a flexible approach is encouraged to achieve this end.

7.1 Taking part in an assessment

The FACS guidance says that local authorities should ensure that individuals are active partners in their own assessments. The SAP guidance confirms this, stating that ‘the older person’s account of their needs and their views and wishes must be kept at the centre of all decisions that are made’.

According to the FACS guidance, assessments should be carried out in such a way that individuals:

- gain a better understanding of their situation
- identify the options available for managing their own lives
- identify the outcomes required from any help provided
- understand the basis on which decisions are reached.

You might find it useful to make a list of things you find difficult, so that you can discuss these when your assessment takes place.

Sometimes people who are ill or disabled have ‘good’ days when they find things easier to manage than on ‘bad’ days. Keeping a kind of diary in which you note things that can be difficult, but which you can sometimes manage, as well as things that are always difficult, can also be helpful to refer to during the assessment.

The assessment of your needs should not be limited to physical needs. Your emotional and psychological needs should also be taken into account. For example, if you are going to live in a care home, one of your needs may be to find a home near a relative so that visiting is easy; or you may have particular cultural, religious or dietary needs. Make sure that you tell the person carrying out the assessment about all your needs.

The SAP identifies a number of ‘domains’ of need that might properly be considered as part of the assessment (see section 6.2 on overview assessment). These domains are: user’s perspective; clinical background; disease prevention; personal care and physical well-being; senses; mental health; relationships; safety; and immediate environment and resources. These are in turn broken down into sub-domains. Not all of the domains will necessarily apply in a particular case.

The assessors should not make any assumptions about the level or quality of support that might be available from a carer without agreeing this first with the relevant parties. If you are a carer, or you are planning to care for someone else, think about the help you feel you would be able to give, as well as the tasks that you will not be able to do, and make sure that you give this information to the person carrying out the assessment. Carers are also entitled to assessments of their own needs and should request this if desired.

Often, those carrying out assessments look at people's needs in terms of what services they know are on offer, rather than looking at what the person feels they need. If you need help with doing your shopping, an offer of meals on wheels, for example, may not be appropriate. Guidance from the Government emphasises that services should be developed to reflect people's needs, and not 'taken off the shelf' when they are not really suitable.

8 Eligibility criteria for services

Once the care assessment has been completed, the local authority has to make a decision about whether or not it will provide or arrange services for you.

It makes these decisions by comparing your assessed care needs with eligibility criteria that it has set for community care services.

Point of law

Section 47(1) of the NHS and Community Care Act 1990 states that, once a need for services has been identified, the local authority must decide whether this calls for the provision of services by the local authority. A similar decision must be made under the Disabled Persons (Services, Representation and Consultation) Act 1986, section 4, if an individual is assessed as being 'disabled'. The wording of this Act has the effect of including the services listed under section 2 of the Chronically Sick and Disabled Persons Act 1970 within those that are potentially available.

8.1 Local criteria

There are no national eligibility criteria for community care services. Each local authority sets its own criteria, and so there are differences around the country. Eligibility criteria are set and agreed by each local authority's Social Services Committee, which is made up of locally elected councillors. However, the FACS guidance sets out a framework for determining eligibility criteria that local authorities should respect in setting their criteria.

The framework suggests four bands of eligibility – critical, substantial, moderate and low – representing the seriousness of the risk to the individual's independence if problems and issues are not addressed. Authorities should prioritise needs on their immediate and longer term consequences for the individual's independence if the need is not addressed. The FACS guidance requires the evaluation of that risk to focus on the following aspects of independence:

- autonomy and freedom to make choices
- health and safety including freedom from harm, abuse and neglect
- taking wider issues of housing and community safety into account
- the ability to manage personal and other daily routines
- involvement in family and wider community life.

Because eligibility criteria are set locally, Age Concern England cannot give detailed information on the criteria in particular areas. Information about eligibility should be available in the authority's Better Care, Higher Standards charter. Your local Age Concern or Citizens Advice Bureau may be able to help you find out more about local criteria.

Local authorities can take their own resources into account when setting eligibility criteria but the level of resources cannot be the only factor. Once a local authority has set its criteria, it cannot use a subsequent shortage of resources as a reason for not meeting your needs (*R v Gloucestershire County Council ex parte Barry, 1997*).

Some local authorities use 'funding panels' to determine whether individuals will be provided with services that they have been assessed as needing. This may be unlawful and you should complain if this happens to you (see section 14).

The local authority cannot choose a care package for you just because it is cheaper than the alternatives. For example, you cannot be asked to move to a care home just because it is cheaper than the home care you would need (or vice versa). You should be provided with the care best suited to meet your needs. However, if there are two options that would meet your needs equally well, the local authority can choose the cheaper one. If you are unhappy with the care offered by the local authority seek further advice.

9 **When criteria change**

The local authority will usually review its eligibility criteria for community care services each financial year (between April and the following March).

Reviews can be brought forward if there are major or unexpected changes that may have consequences for the authority's plans.

If the criteria change and become more restrictive, you may find that you no longer qualify for as much help as before. If criteria become more generous, more help may be available to you. However, before your local authority makes any changes to your services, it must first assess your care needs – as described in section 7 – and compare them with the new criteria.

If your reassessed care needs meet the new criteria, then your local authority will have a duty to meet those needs by providing or arranging services. See section 12 for what you can do if your services may be reduced following a reassessment under new criteria.

10 **Provision of services**

Once your assessed needs have been compared with your local authority's eligibility criteria, your local authority social services department has a duty to meet your needs as soon as is reasonably practicable. A lack of financial resources is not a valid reason for the authority to fail to provide those services.

The local authority is entitled to exercise flexibility about how those needs are to be met (*R v Kirklees MBC ex p Daykin*), but see also section 11 below, if the service decision is a recommendation for you to live permanently in a care home.

The services you receive may be described as your 'care package'. For example, this could include a home help service and meals on wheels, as well as regular respite care.

10.1 **The care plan**

Once the local authority has decided that it should provide or arrange help for you it should then draw up a care plan. You should be provided with a copy of the written record of the care plan. According to the FACS guidance this should contain, as a minimum, the following information:

- a note of the eligible needs and associated risks
- the objectives of the service provision and preferred outcomes
- contingency plans for managing any emergency changes
- details of the services to be provided, any charges the individual has been assessed to pay and whether a direct payment has been agreed
- support that carers and others, such as voluntary agencies, are willing to provide
- a review date.

If your care plan is not very detailed it can cause problems for you because if you don't know what help you are supposed to get, you cannot complain if you don't get it. Some authorities provide very detailed care plans that clearly set out who will provide each service, which organisation they work for, when they will arrive and leave, and what tasks they will be doing. Others provide more limited information. The SAP guidance suggests that the level of detail in the care plan should be in proportion to the assessed/eligible needs and service provision. If you need to know more about what help is being provided or arranged for you, ask the person who drew up the care plan to explain this in more detail.

A central requirement of the SAP is that in all cases a single assessment summary comprising sets of standardised assessment information should be produced. The three sets of information that have to be covered are basic personal information, needs and health, and there must be a care plan.

Point of law

Under the *Access to Personal Files (Social Services) Regulations 1987*, if a local authority social services department holds personal information about you, you have a right to obtain a copy of it. Your request must be made in writing.

The local authority may charge you an administration fee, but this cannot be more than £10 at the time of writing. You can request the social services department to amend any of the information you believe is inaccurate.

However, there are circumstances where social services can refuse to let you see some of the information held on your personal file – for example, when they feel the material would cause you serious physical, mental or emotional harm; or when information is held for the purposes of preventing crime or apprehending offenders, and disclosure is likely to be prejudicial to these purposes.

Sometimes there can be difficulties if you are caring for someone and need to see their care assessment and care plan. But there would be nothing to stop the person you care for choosing to share the information with you. If the care plan hinges on you providing care for someone, then you should ask the local authority to share the information with you.

10.2 What happens if someone refuses services?

The local authority has no general power to make someone accept help against their will. There is some legislation that can be used to require someone to receive services, but only in very particular circumstances. Such action requires the agreement and involvement of health professionals, and sometimes may also involve the courts.

Section 47 of the National Assistance Act 1948 can be used to require someone to live in a care home rather than their own home should the person be:

- suffering from grave chronic disease or, being aged, infirm or physically incapacitated, be living in unsanitary conditions
- unable to devote to themselves, and not be receiving from others, proper care and attention.

Section 47 of the National Assistance Act 1948 can also be used to require someone to receive services in order to: 'prevent injury to the health of, or serious nuisance to, other persons'. In practice this is not commonly used.

Certain provisions under Part II of the Mental Health Act 1983 can be used to require someone to stay for a period of time in a psychiatric hospital or unit or other institution (often referred to as being 'sectioned' or detained).

The Mental Capacity Act 2005, which came fully into force on 1 October 2007, sets out a framework for how decisions should be made in the best interests of someone who lacks mental capacity to make those decisions themselves. See Age Concern Factsheet 22, *Arranging for others to make decisions about your finances or welfare* (available end of September 2009), for further information about the Mental Capacity Act 2005.

The Mental Capacity Act 2005 Deprivation of Liberty Safeguards came into force in April 2009. The new legislation aims to provide safeguards to ensure that people are only deprived of their liberty where this is necessary for their own safety, and to provide the care and treatment they need, and where a lawful procedure has been followed to authorise this. It also provides people with access to a court to challenge their detention. See Age Concern Factsheet 62, *Deprivation of Liberty Safeguards*.

10.3 **What to do if you disagree with the authority's assessment**

It is possible that after the care assessment your local authority will decide that your needs do not meet its criteria. Alternatively, you may be offered assistance that you feel is inadequate to meet your needs. The authority should put its decision, and the reasons for it, in writing and make a copy available to you. Before making this decision the authority should satisfy itself that your needs will not significantly worsen or increase in the foreseeable future as a consequence of lack of help.

You should be made aware that the council's complaints procedure (see below) can be used to challenge the local authority's position. See section 14 for details of this and other remedies that may be available. You should also be advised that if your circumstances change you can approach the authority for another assessment.

A contact number within the authority should be provided. The local authority should also be prepared to offer information and advice about other sources of support that might be help address outstanding issues and problems.

If you have been assessed by a Care Trust and told that you are not entitled to services then contact the trust initially to try and resolve the problem. However, the local authority is ultimately responsible for the provision of social services and you can pursue a complaint directly against the authority if appropriate services cannot be arranged.

The local authority is unlikely to be able to claim that it has discharged its responsibility towards you if you refuse its initial offer of services. Previously, a judgement has found that it would require 'manifestation of persistent and unequivocal refusal, rather than a single transgression' (Kutjim, 1999) on the part of an individual before the authority could claim to have made all the reasonable efforts that it could to meet the person's needs and thus withdraw from the situation.

The Age Concern Factsheet 46, *Paying for care and support at home* and the Information Guide *Help with care in your own home* contain suggestions on other sources of help, and your local Citizens Advice Bureau or local Age Concern may know about other services in your area (see section 16).

10.4 **Review of assessments**

Local authorities should review new service users' needs within three months of help being provided, and thereafter at least annually. Your care plan should contain a review date.

Reviews can also be requested at any time by service users, their representatives, care providers or any other appropriate individual or agency, if the individual's circumstances appear to warrant it; for example, if the person's needs or circumstances have changed, or existing services are not meeting their needs, or a carer can no longer offer the same level of support.

The local authority may decide, following a review, that you no longer require the services that you have been using, either because your needs have changed or because its eligibility criteria have altered. The FACS guidance advises authorities to show caution and sensitivity when considering the withdrawal of services, particularly where, before the implementation of the guidance, service users may have gone for some time without a review. The local authority should also check whether the service user had previously been given any assurances about the duration of service provision.

In some cases it may not be practicable or safe to withdraw your service, even though you appear to fall outside the current criteria, particularly if, by doing so, you are then left 'in serious physical risk'. A High Court judgement (*R v Birmingham City Council ex parte Killigrew 1999*) ruled that where care is provided because a person would otherwise be at risk, the local authority must consider why the person's needs have changed since the last assessment before the service is reduced.

They must also take account of any other information they should reasonably be aware of which indicates that reducing care might put the person at risk. In the Killigrew case, the judge criticised the local authority for overlooking concerns raised in carers' day-to-day records.

If your services are withdrawn or reduced, your local authority must tell you about your right to appeal against the outcome of the reassessment by using the complaints system – see section 14. If your local authority tries to reduce or withdraw services without reassessing your care needs, you could also use the complaints procedure.

10.5 What happens if someone needs help urgently?

Local authorities can, under section 47 of the NHS and Community Care Act 1990, temporarily provide or arrange services before a care assessment has been carried out if, in their view, the person's situation or condition is such that services are required as a matter of urgency.

Once any temporary services are in place, the Act requires local authorities to carry out a care assessment 'as soon as is practicable'. The person should be advised of this and that services may be withdrawn or changed as a result of the fuller assessment.

11 Care in your own home

The local authority's duty towards you is to provide or arrange services that meet your assessed and agreed needs, as defined using the FACS framework and including social and psychological needs.

There might be several ways this could be done – for example, receiving support in your own home, or direct payments or a personal budget to enable you to arrange your own support, or moving to live in a care home.

Where care needs such as these could be met equally well through different service options, the local authority can legitimately offer the option that is cheapest for it to provide or arrange.

This has been confirmed in a legal judgement (*R v Lancashire County Council ex parte Ingham 1996*). If a large amount of care is required to enable someone to remain living in their own home or in sheltered housing it might be cheaper for the person to move into a care home. Some local authorities set a limit how much care they will provide or arrange to support someone in their own home, or in sheltered housing, before suggesting that the person move to a care home. Any such limit should be applied flexibly.

The services you are offered must meet your assessed and agreed needs even if to do so costs more than the authority's usual limit. If a more expensive package of care in your home would meet your needs in a way that a cheaper care home could not, the local authority cannot insist that you accept the cheaper option on the grounds of cost alone. In the FACS policy guidance authorities are reminded to 'tailor services to each individual's circumstances, and...only use upper cost parameters for care packages as a guide'.

11.1 **Negotiating over care**

In some circumstances, it may be possible for you to negotiate with your local authority or other agency carrying out the assessment on its behalf under the SAP about the care it will provide or arrange. If you would prefer to remain living at home but your care needs could be met more cheaply by moving to a care home, it may be possible to ask your local authority to look again at how services could be provided or arranged to help you stay at home.

If you have a carer who is willing and able to help you with some things, you and your carer could ask your local authority if it will agree to some tasks being carried out by the carer, with the authority providing or arranging the rest. The local authority should not make assumptions about the level of support that carers can provide. Nor should carers feel pressured to do more than they can manage.

Some older people have asked their authority only to provide the services at home which are, in their view, the most essential or they have agreed to services being carried out for shorter periods of time. Doing this could mean that you do not get all the help you need.

In these circumstances, your local authority might ask you to sign something to say that you understand that the care it will provide or arrange will not meet all your agreed needs or that you are rejecting the offer of a place in a care home which would meet all these needs. Your local authority may want to make sure you understand the possible risk involved.

Whether or not you have a carer, you may want to make sure that the local authority has involved the health and housing authorities in your area, if you have needs they should be meeting. You might want to try to find out what other services are available in your area which could supplement the social services' help – Age Concern Information Guide, *Help with care in your own home*, suggests other sources of help. Or you may have sufficient income or savings to be able to buy some additional help over and above the level of services from the local authority.

These sorts of compromises and negotiations may be far from ideal, but some older people have found this approach has helped them to remain living at home. However, even where negotiations are possible, this does not mean that the local authority can ignore any duties and responsibilities towards you that are set out in law.

12 Receiving care in care homes

Ultimately, you may need or wish to move and live permanently in a care home. The local authority has a duty, under section 21 of the National Assistance Act 1948, to provide or arrange permanent care in a home for you if you have been assessed as requiring this care and it is 'not otherwise available to you'. There are two circumstances when this is likely to apply:

- you cannot pay the full cost of your care in a home because the fees are higher than your income and your capital is below the national means test upper limit of £23,000 (in England in 2009/10)
- your income is high enough to pay for care in full, and/or your capital is above the upper limit, but you are not able to make the arrangements yourself, and there is no one who is willing and able to do this on your behalf.

If you cannot arrange your own care the local authority has no power to oblige a relative or other interested party to do it for you – that person must be willing to make the arrangements as well as able to do so. If you have more than £23,000 you may decide to make your own arrangements with a care home.

If you will be making your own arrangements to move into a care home, Age Concern Information Guide, *How to find a care home* and Age Concern's *Care home checklist* may be helpful. If you subsequently become eligible for financial support, usually because your capital has diminished, you should again approach your local authority social services department for help. Your local authority will be obliged to assist you if the care you need is no longer otherwise available.

It may take some time for the authority to carry out the formalities necessary for it to agree funding. It may be worth approaching your authority and requesting that it carry out an assessment, or reassessment, a few months before you will become eligible for financial support. If you are not sure whether there might be delays in your area, ask your authority, and if possible, ask that this be confirmed to you in writing.

If your authority takes longer to assess you and agree funding than the timescale set out in its local long term care charter, or longer than it has told you in writing, use the complaints procedure as outlined in section 14.

Even while you are self-funding the NHS is responsible for meeting the cost of any care you require from a registered nurse. You should be assessed to establish the level of your nursing need and the NHS will make a payment directly to the home, which should then be taken into account in the calculation of your fees. Age Concern Factsheet 20, *NHS continuing healthcare, NHS-funded nursing care and intermediate care*, contains more information on this subject.

13 **Paying for services at home and in a care home**

When a local authority provides or arranges services for you, in most circumstances you will be asked to contribute towards the cost of care in a care home. They are not required to charge for non-residential services but most now do. Sources of information on how these contributions will be calculated are suggested below.

The local authority cannot ask you to pay for services provided or arranged under section 117 of the Mental Health Act 1983. These are services for the prevention, after-care and supervision of people with a mental illness or disorder who have previously been detained in hospital under sections 3, 37, 47 or 48 of the Mental Health Act 1983.

Each local authority is able to set its own charging policy for non-residential services but these have to comply with certain minimum requirements. The Government has issued guidance setting these out. If you think that your assessed charge is unreasonable you can make a complaint to the authority. Further details can be found in Age Concern's Factsheet 46, *Paying for care and support at home*.

If you are assessed as needing permanent care in a care home (or a temporary stay of longer than eight weeks), the means test is done according to national rules, which are described in Age Concern Factsheet 10, *Paying for permanent residential care*, and other factsheets on residential care.

Age Concern Factsheet 38, *The treatment of property in the means test for permanent care home provision*, may also be of interest if you own a property. Factsheet 39, *Paying for care in a care home if you have a partner*, may be useful for residents who have a partner or spouse.

14 **What to do if there is a problem**

For many people, the assessment will lead to a satisfactory outcome and the provision of suitable services. In some cases no help may be offered or you may be offered help that you feel is inappropriate for your situation. If you are unhappy with the outcome of the assessment, ask for a copy of it including the reasons why the help cannot be offered. It may also be useful to obtain a copy of the local authority eligibility criteria. You can use the local authority's complaints procedure to challenge the assessment.

14.1 **Using the complaints procedure**

You have the right to complain about any aspect of the local authority's community care functions that you are unhappy with, including the assessment process. Under the NHS and Community Care Act 1990, every local authority social services department must have a complaints procedure, and must be able to give you information about it.

Each council is required to operate a complaints procedure as set out in the Local Authorities' Social Services Complaints (England) Regulations 2006. The council should provide you with information about its complaints process. From 1 April 2009, a new joint health and social care complaints procedure was introduced. This replaced the three-stage local authority system with a new, more flexible, one-stage procedure. A further level of complaint to the Local Government Ombudsman is available if you are not satisfied with the outcome of the local procedure. This is the main route by which you can seek to resolve any dissatisfaction or disagreement with the local authority, so make use of it.

Further information on the new procedure can be found on Age Concern Factsheet 59, *How to resolve problems and complain about the local authority*.

14.2 Other action you might take

You might also wish to contact your local councillors, to see if they will support you in putting your case, or relevant support groups, or your Member of Parliament if you feel that the MP should know that the system is not working for you.

If you wish to seek legal advice, Age Concern Factsheet 43, *Getting legal advice* (available end of September 2009) may be helpful.

15 Further reading

Disability Rights Handbook. 33rd edition, 2008-2009. Price £21.00 (£14.50 for individuals receiving benefits). For further information about the Handbook and other publications please phone: or write to: Publications, Disability Alliance, Universal House, 88-94 Wentworth Street, London E1 7SA, Tel: 020 7247 8776, website: www.disabilityalliance.org

Paying for Care Handbook, 6th edition. Price £19.50 (plus p&p from £3.99 depending on value of order). Available from CPAG, 94 White Lion Street, London N1 9PF, tel: 020 7837 7979, website: www.cpag.org.uk, email for book orders: bookorders@cpag.org.uk

Fairer charging policies for home care and other non-residential social services (the policy guidance). Available from the Department of Health website: www.dh.gov.uk. If you do not have access to the internet your local library or Age Concern may be able to assist you.

16 Useful organisations

As each local authority has its own charging policy you may find it helpful to first approach an advice organisation such as your local Age Concern or Citizens Advice Bureau or one of the following national organisations.

● Association of Charity Officers (The)

Over 200 member funds including some that run care homes for professional, commercial and occupational groups: The Occupational Benevolent Funds Alliance. If you need financial help from a charity fund contact the Association's helpline giving details of your family background and career pattern. The Association can signpost enquirers to funds that might be able to help them. Emails can be sent from both websites to the helpline.

Tel: 01707 651777

Website(s): www.aco.uk.net and www.joblinks.org.uk which is a searchable website of ACO members for individuals in need.

● Carers UK

National charity working on behalf of carers. Offers wide range of information on carers' rights and sources of help and contact details for local carers' support groups.

Tel: 0808 808 7777 (free call)

Website: www.carersuk.org.

● Charity Search

A charity providing free advice for older people, to link them with established charities which may be able to help with funds. Does not give grants to individuals.

Tel: 0117 982 4060

- **Citizens Advice Bureau (CAB)**

National network of free advice centres including advice about national housing provision.

Tel: 020 7833 2181 (for contact details only – not telephone advice)

Website: www.citizensadvice.org.uk

- **Counsel & Care**

Provides advice for older people, their families and professionals on community care and other issues.

Tel: 0845 300 7585

Website: www.counselandcare.org.uk

- **Equality and Human Rights Commission**

A statutory body that has the responsibility to protect, enforce and promote equality across the seven 'protected' grounds – age, disability, gender, race, religion and belief, sexual orientation and gender reassignment.

Tel: 0845 604 6610

Website: www.equalityhumanrights.com/

- **foundations**

Co-ordinating body for Home Improvement Agencies (HIAs). HIAs offer independent advice, information, support and practical assistance to older owner occupiers, among others, to repair and adapt their homes. To find out if there is an agency in your area contact as below.

Tel: 01457 891909

Website: www.foundations.uk.com

- **Local Government Ombudsman (LGO)**

The LGO may be willing to take up a case before you have been through the local authority procedure. A free leaflet explaining the Ombudsman's role is available from the Commission for Local Administration in England, Millbank Tower, Millbank, London SW1P 4QP.

Tel: 0845 602 1983

Website: www.lgo.org

- **RADAR: the disability network**

RADAR is the UK's largest disability campaigning organisation.

Website: www.radar.org.uk

Tel: 020 7250 3222

Email: radar@radar.org.uk

17 **Further information about Age Concern**

You can obtain a wide range of free information from Age Concern in the form of information guides and factsheets.

Visit the Age Concern website, www.ageconcern.org.uk, or call our national Information Line on 0800 00 99 66 (free call) if you would like:

- to order copies of any of the Age Concern information materials mentioned in this factsheet
- to request information in large print
- further information about our full range of information products
- contact details for your nearest local Age Concern.

Books from Age Concern

Age Concern publishes a wide range of books for older people and those who care for and work with them. The following title may be of particular interest:

Your rights to money benefits 2009/10. All you need to know about the full range of benefits for the over 60s. £5.99 (available June 2009)

To order this book, or to view our full range of books, please visit our website www.ageconcern.org.uk/bookshop or call our book order line 0870 442 2120).

Age Concern and Help the Aged

Age Concern England and Help the Aged have joined together to form Age UK, a single charity dedicated to improving the lives of older people.

Age Concern and Help the Aged across the UK

To find out more about Age Concern and Help the Aged's work in Northern Ireland, Scotland and Wales, contact:

Age Concern Northern Ireland

Tel: 028 9032 5055

Website: www.ageconcernni.org

Scottish Helpline for Older People (Age Concern Scotland)

Tel: 0845 125 9732

Websites: www.olderpeoplescotland.org.uk

www.ageconcernscotland.org.uk

Age Concern Cymru & Help the Aged in Wales

Tel: 029 2043 1555

Website: www.accymru.org.uk

Support our work

Age Concern is the largest provider of services to older people in the UK after the NHS. We make a difference to the lives of thousands of older people through local resources such as our befriending schemes, day centres and lunch clubs; by distributing free information materials; and through our national freephone helpline – the Age Concern Information Line 0800 00 99 66.

If you would like to support our work by making a donation please call Supporter Services on 020 8765 7527 (national call rate, Monday to Friday 9.15am–5pm) or visit www.ageconcern.org.uk

Legal statement

Age Concern England (charity number 261794) has merged with Help the Aged (charity number 272786) to form Age UK, a charitable company limited by guarantee and registered in England: registered office address 207-221 Pentonville Road, London, N1 9UZ, company number 6825798, registered charity number 1128267.

Age Concern and Help the Aged are brands of Age UK. The three national Age Concerns in Scotland, Northern Ireland and Wales have also merged with Help the Aged in these nations to form three registered charities: Age Scotland, Age Northern Ireland, Age Cymru.

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Please note that the inclusion of named agencies, companies, products, services or publications in this factsheet does not constitute a recommendation or endorsement by Age Concern and Help the Aged. While every effort is made to ensure accuracy, Age Concern and Help the Aged cannot be held responsible for errors or omissions.

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