

Care Act Eligibility for Adults with Care and Support Needs and their Carers in Torbay

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Partners in Care

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Introduction

This policy has been developed to set out the social care assessment practice in the context of *Getting it right for every adult, their family and their carers*.

Torbay & South Devon NHS Foundation Trust (“the Trust”) Adult Social Care is changing the way it works to develop a ‘new approach’ and in line with Torbay Council’s strategy, it has been re-shaping its model of care (post Care Act 2014) to utilise a more strengths based approach. This means working together with people to find out what they want to achieve and the best way to do this, supporting people to use their strengths and those of their family, friends and community. The aim is to enable people to achieve their goals, reach their full potential and reduce reliance upon traditional services where there are existing community resources that can meet the assessed need.

This change in the way we work is essential to help us get better at supporting people to achieve:

- Choice
- Independence
- Being in control of their lives
- Having fulfilling lives – family, friends, work, leisure
- Promoting their strengths, to be the best they can be

The Care Act 2014 sets out the individual aspects of wellbeing or outcomes and places a duty on local authorities to promote wellbeing when carrying out any of their care and support functions. They must

- use the national eligibility criteria to determine your eligible needs
- focus on the best outcomes for you

Furthermore, the Care Act 2014 states that the eligibility threshold is based on identifying how a person’s needs affect their ability to achieve relevant outcomes, and how this impacts on their wellbeing. This relates both to adults who may need care and support and their carers.

Wellbeing is a broad concept, and it is described as relating to the following areas:

- § 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 that is provided and the way it is provided);
- § social and economic wellbeing;
- § domestic, family and personal wellbeing;
- § participation in work, education, training or recreation;
- § suitability of living accommodation;
- § the individual’s contribution to society.

Legal Framework

The national eligibility threshold for adults with care and support needs and their carers is set out in the Care Act 2014 and the Care and Support (Eligibility Criteria) Regulations 2014 (“the Eligibility Regulations”).

Scope of policy

This policy applies to our approach to care and support involving adults, who are ordinarily resident in Torbay, and are over the age of 18 to include those that are eligible for care and support under the Care Act 2014. It also applies to young people supported by Children’s Services when planning for their transition to adult care.

In deciding whether the early provision of information, advice or preventative services would delay a person from developing needs which then go on to meet the eligibility criteria or whether longer term care and support might be needed, we will work alongside the person needing care or with their carer and family where appropriate, to think more broadly about what support might be available in the local community or through support networks to meet the needs of the individual and support the outcomes they want to achieve.

Principles of the policy

In Torbay we are changing the conversation to empower people and become more creative in the way we meet their needs and will ensure that all needs are considered, including those currently being met informally whilst working with the adult, carer and their family to identify what matters to them and how best this can be met.

We will not just focus on need and will consider what people can do for themselves as well as what services can do for them. We will prepare for an assessment by having a number of conversations:

Conversation 1: “How can we connect you to the things that will help you get on with your life?”

§ What would you like to achieve?

Conversation 2: “What do we need to do to ensure you are safe and have control over things that are important to you?”

§ What are your concerns and risks to your independence?

§ What has already been tried to help you with your independence

Conversation 3: “How can we help you use your resources to support yourself?”

§ What is your current support networks including family friends and the community?

§ Who or what else do you think might help you to regain and/maintain independence?

These conversations could be initially over the phone, or in a place convenient to you.

How we will work with you

Torbay Council and Torbay and South Devon NHS Foundation Trust have a responsibility to fund or commission agencies that reduce or delay the risk of people needing care and support, provide information and advice as well as a duty to ensure that all eligible care and support needs are appropriately met. This will involve considering a range of factors including:

- § Understanding what each person's goals are and what they need in order to achieve them.
- § Action available to each person to reduce the need for assistance (self-help).
- § Access to and the availability of universal services and community resources such as funded voluntary sector services, housing related support and community groups (considering what is available that could prevent, meet or reduce the needs that are not eligible).
- § The contribution willingly made by family carers and informal support.
- § The contribution of Reablement and Intermediate Care Services (reducing or removing the need for long-term care and support).

The purpose is to ensure the advice, information and provision of adequate support (as outlined above) meets the eligible social care and support needs and achieves the desired and agreed outcomes at best value for money.

Once we have discussed what solutions are best for you we will help you to make plans to achieve your goals, we may signpost you to other services which are not commissioned and provided by us. If those solutions do not work we will then undertake a formal assessment against the national eligibility criteria. The national eligibility threshold is based on identifying how a person's needs affect their ability to achieve relevant outcomes, and how this impacts on their wellbeing.

The Eligibility Regulations list ten outcomes that should be considered when determining a person's eligibility for care and support. They cover broad life areas where people might experience difficulty in achieving the personal outcomes they want.

The ten specified outcomes are:

1. managing and maintaining nutrition;
2. maintaining personal hygiene;
3. managing toilet needs;
4. being appropriately clothed;
5. being able to make use of the adult's home safely;
6. maintaining a habitable home environment;
7. developing and maintaining family or other personal relationships;
8. accessing and engaging in work, training, education or volunteering;
9. making use of necessary facilities or services in the local community including public transport, and recreational facilities or services; and
10. carrying out any caring responsibilities the adult has for a child.

You will have eligible needs if you meet all of the following criteria (as set out in the Eligibility Regulations):

- § You have care and support needs as a result of a physical or mental impairment or illness.
- § Because of those needs, you cannot achieve two or more [specified outcomes](#)
- § As a result, there is or is likely to be a significant impact on your wellbeing

The outcomes include dressing and other activities of daily living, maintaining personal relationships, and working or undertaking education or training.

What we will do differently is that we will use our specialist skills in different ways to visualise situations from the conversations with you to help signpost and resolve issues in the most timely and effective way. In the first instance we will consider whether there are existing resources in the community that can meet your eligible needs/that we can agree to try.

It may also be that you do not need support permanently, rather a short term offer of help whilst you recover. We will always focus our support on getting you better so you don't need long term support.

Fluctuating needs

Adults with fluctuating needs may have needs which are not apparent prior to or at the time of the assessment, but may have arisen in the past and are likely to arise again in the future. Therefore, in discussing solutions we will consider the individual needs over an appropriate period of time to ensure that all of the needs have been accounted for when eligibility is being determined. Where fluctuating needs are apparent, this will also be factored into assessment and the care plan, detailing the steps we will take.

Needs not covered by Adult Social Care

Assessments and reviews may identify non-eligible needs that other agencies are responsible for meeting, including housing and health services. These include:

- § NHS responsibilities for meeting Continuing Health Care needs
- § Nursing care as set out in Section 49 of the Health and Social Care Act 2001
- § Intermediate healthcare
- § Supporting People
- § Disabled Facilities Grants (Grants are funded externally unless the individual's needs exceed a maximum funding threshold. IF the eligible needs assessed under the Care Act (2014) are in excess of this threshold, funding can be reviewed via adult social care)

Torbay and South Devon NHS Foundation Trust is able to commission and or provide a range of rehabilitation, prevention, reablement and treatment services from other agencies that are not subject to the current national eligibility criteria.

If you have savings that exceed the national threshold we are unlikely to be able to help you pay for support, but will assess you and offer advice. (This financial limit does not apply if we agree aids or equipment could help you).

Other legal duties

Our assessment of your eligibility will also pay due regard to our legal duties under the following Acts:

- Mental Health Act 1983
- Mental Capacity Act (Deprivation of Liberty Safeguards) 2005
- *(And any other relevant statutory duties that may come into force)*

References and related information

- Care Act 2014
- Department of Health Care and Support (Eligibility Criteria) Regulations 2015
- SCIE Eligibility Quick Guide

Complaints

To undertake a complaint there is information on the Trust's internet page with a useful flow diagram on the link below;

<https://icon.torbayandsouthdevon.nhs.uk/areas/complaints/Documents/complaints-flow-chart.pdf>

The Mental Capacity Act 2005

The Mental Capacity Act provides a statutory framework for people who lack capacity to make decisions for themselves, or who have capacity and want to make preparations for a time when they lack capacity in the future. It sets out who can take decisions, in which situations, and how they should go about this. It covers a wide range of decision making from health and welfare decisions to finance and property decisions

Enshrined in the Mental Capacity Act is the principle that people must be assumed to have capacity unless it is established that they do not. This is an important aspect of law that all health and social care practitioners must implement when proposing to undertake any act in connection with care and treatment that requires consent. In circumstances where there is an element of doubt about a person's ability to make a decision due to 'an impairment of or disturbance in the functioning of the mind or brain' the practitioner must implement the Mental Capacity Act.

The legal framework provided by the Mental Capacity Act 2005 is supported by a Code of Practice, which provides guidance and information about how the Act works in practice. The Code of Practice has statutory force which means that health and social care practitioners have a legal duty to have regard to it when working with or caring for adults who may lack capacity to make decisions for themselves.

“The Act is intended to assist and support people who may lack capacity and to discourage anyone who is involved in caring for someone who lacks capacity from being overly restrictive or controlling. It aims to balance an individual's right to make decisions for themselves with their right to be protected from harm if they lack the capacity to make decisions to protect themselves”. (3)

All Trust workers can access the Code of Practice, Mental Capacity Act 2005 Policy, Mental Capacity Act 2005 Practice Guidance, information booklets and all assessment, checklists and Independent Mental Capacity Advocate referral forms on iCare

http://icare/Operations/mental_capacity_act/Pages/default.aspx

Infection Control

All staff will have access to Infection Control Policies and comply with the standards within them in the work place. All staff will attend Infection Control Training annually as part of their mandatory training programme.

Rapid (E)quality Impact Assessment (EqIA) (for use when writing policies)

Policy Title (and number)		Version and Date	
Policy Author			
An (e)quality impact assessment is a process designed to ensure that policies do not discriminate or disadvantage people whilst advancing equality. Consider the nature and extent of the impact, not the number of people affected.			
Who may be affected by this document?			
Patients/ Service Users <input type="checkbox"/> Staff <input type="checkbox"/> Other, please state... <input type="checkbox"/>			
Could the policy treat people from protected groups less favorably than the general population? <i>PLEASE NOTE: Any 'Yes' answers may trigger a full EIA and must be referred to the equality leads below</i>			
Age	Yes <input type="checkbox"/> No <input type="checkbox"/>	Gender Reassignment	Yes <input type="checkbox"/> No <input type="checkbox"/>
Race	Yes <input type="checkbox"/> No <input type="checkbox"/>	Disability	Yes <input type="checkbox"/> No <input type="checkbox"/>
Gender	Yes <input type="checkbox"/> No <input type="checkbox"/>	Pregnancy/Maternity	Yes <input type="checkbox"/> No <input type="checkbox"/>
Sexual Orientation			Yes <input type="checkbox"/> No <input type="checkbox"/>
Religion/Belief (non)			Yes <input type="checkbox"/> No <input type="checkbox"/>
Marriage/ Civil Partnership			Yes <input type="checkbox"/> No <input type="checkbox"/>
Is it likely that the policy could affect particular 'Inclusion Health' groups less favourably than the general population? (substance misuse; teenage mums; carers ¹ ; travellers ² ; homeless ³ ; convictions; social isolation ⁴ ; refugees)			Yes <input type="checkbox"/> No <input type="checkbox"/>
Please provide details for each protected group where you have indicated 'Yes'.			
VISION AND VALUES: Policies must aim to remove unintentional barriers and promote inclusion			
Is inclusive language ⁵ used throughout?			Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/>
Are the services outlined in the policy fully accessible ⁶ ?			Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/>
Does the policy encourage individualised and person-centred care?			Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/>
Could there be an adverse impact on an individual's independence or autonomy ⁷ ?			Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/>
EXTERNAL FACTORS			
Is the policy a result of national legislation which cannot be modified in any way?			Yes <input type="checkbox"/> No <input type="checkbox"/>
What is the reason for writing this policy? (Is it a result in a change of legislation/ national research?)			
Who was consulted when drafting this policy?			
Patients/ Service Users <input type="checkbox"/>		Trade Unions <input type="checkbox"/>	
Staff <input type="checkbox"/>		Protected Groups (including Trust Equality Groups) <input type="checkbox"/>	
General Public <input type="checkbox"/>		Other, please state... <input type="checkbox"/>	
What were the recommendations/suggestions?			
Does this document require a service redesign or substantial amendments to an existing process? <i>PLEASE NOTE: 'Yes' may trigger a full EIA, please refer to the equality leads below</i>			Yes <input type="checkbox"/> No <input type="checkbox"/>
ACTION PLAN: Please list all actions identified to address any impacts			
Action	Person responsible	Completion date	
AUTHORISATION:			
By signing below, I confirm that the named person responsible above is aware of the actions assigned to them			
Name of person completing the form		Signature	
Validated by (line manager)		Signature	

Please contact the Equalities team for guidance:

For South Devon & Torbay CCG, please call 01803 652476 or email marisa.cockfield@nhs.net

For Torbay and South Devon NHS Trusts, please call 01803 656676 or email pfd.sdht@nhs.net
This form should be published with the policy and a signed copy sent to your relevant organisation.

- ¹ Consider any additional needs of carers/ parents/ advocates etc, in addition to the service user
- ² Travelers may not be registered with a GP - consider how they may access/ be aware of services available to them
- ³ Consider any provisions for those with no fixed abode, particularly relating to impact on discharge
- ⁴ Consider how someone will be aware of (or access) a service if socially or geographically isolated
- ⁵ Language must be relevant and appropriate, for example referring to partners, not husbands or wives
- ⁶ Consider both physical access to services and how information/ communication is available in an accessible format
- ⁷ Example: a telephone-based service may discriminate against people who are d/Deaf. Whilst someone may be able to act on their behalf, this does not promote independence or autonomy

Clinical and Non-Clinical Policies – New Data Protection Regulation (NDPR)

Torbay and South Devon NHS Foundation Trust (TSDFT) has a commitment to ensure that all policies and procedures developed act in accordance with all relevant data protection regulations and guidance. This policy has been designed with the EU New Data Protection Regulation (NDPR) in mind and therefore provides the reader with assurance of effective information governance practice.

NDPR intends to strengthen and unify data protection for all persons; consequently, the rights of individuals have changed. It is assured that these rights have been considered throughout the development of this policy.

Furthermore, NDPR requires that the Trust is open and transparent with its personal identifiable processing activities and this has a considerable effect on the way TSDFT holds, uses, and shares personal identifiable data. The most effective way of being open is through data mapping. Data mapping for NDPR was initially undertaken in November 2017 and must be completed on a triannual (every 3 years) basis to maintain compliance. This policy supports the data mapping requirement of the NDPR.

For more information:

- Contact the Data Access and Disclosure Office on dataprotection.tsdf@nhs.net,
- See TSDFT's [Data Protection & Access Policy](#),
- Visit our [GDPR](#) page on ICON.