

## A ROUGH GUIDE TO ELIGIBILITY UNDER THE CARE ACT 2014

### 1. INTRODUCTION

This rough guide clarifies the approach the Care Act takes to determining the eligibility. The starting point of this undertaking is to state, as clearly as possible, that the FACS eligibility criteria will cease to exist on 1<sup>st</sup> April 2015 and be replaced by the new national minimum eligibility threshold.

This marks a radical change with respect to the determination of eligibility with social carer's pre-occupation about levels of need (critical, substantial, moderate and low) being replaced by a much sharper focus on the outcomes people want to achieve when determining eligibility. The introduction of the national minimum eligibility threshold marks a decisive shift from needs dominated thinking and assessment to a concentration on outcomes.

To help colleagues come to grips with the new criteria and the accompanying shift to outcomes a few basic steps will be described that are based on the statutory guidance accompanying the Care Act. In so doing a distinction will be made between the differing approaches the Act takes to determining the eligibility of adults needing care and support and that of their carers<sup>1</sup>.

### DETERMINING ELIGIBILITY FOR ADULTS WITH CARE AND SUPPORT NEEDS

### 2. OVERVIEW

Chart 1, immediately below, outlines the process to be followed when determining whether, or not, an adult has eligible needs. It shows the conditions, in the form of responses to three key questions, that must be met for a determination of eligibility to be made. The chart also shows the order in which these conditions must be considered.

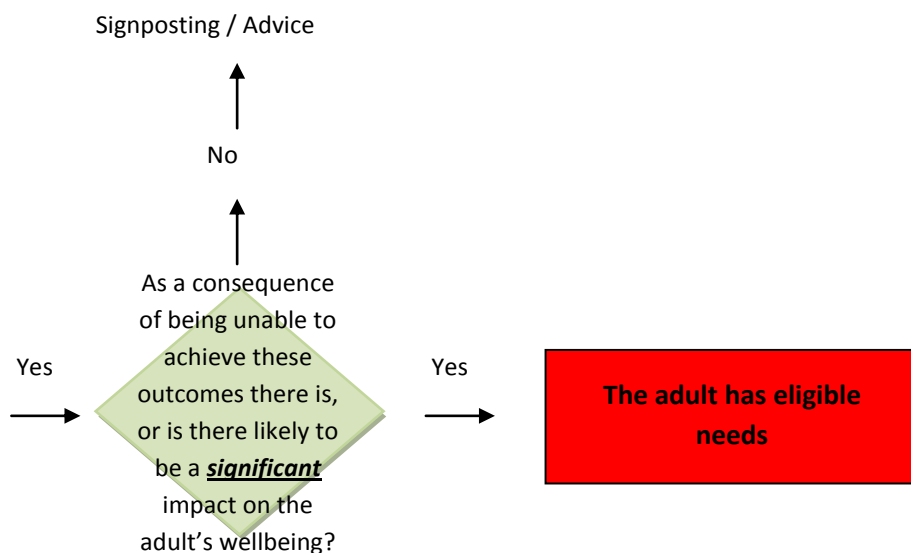
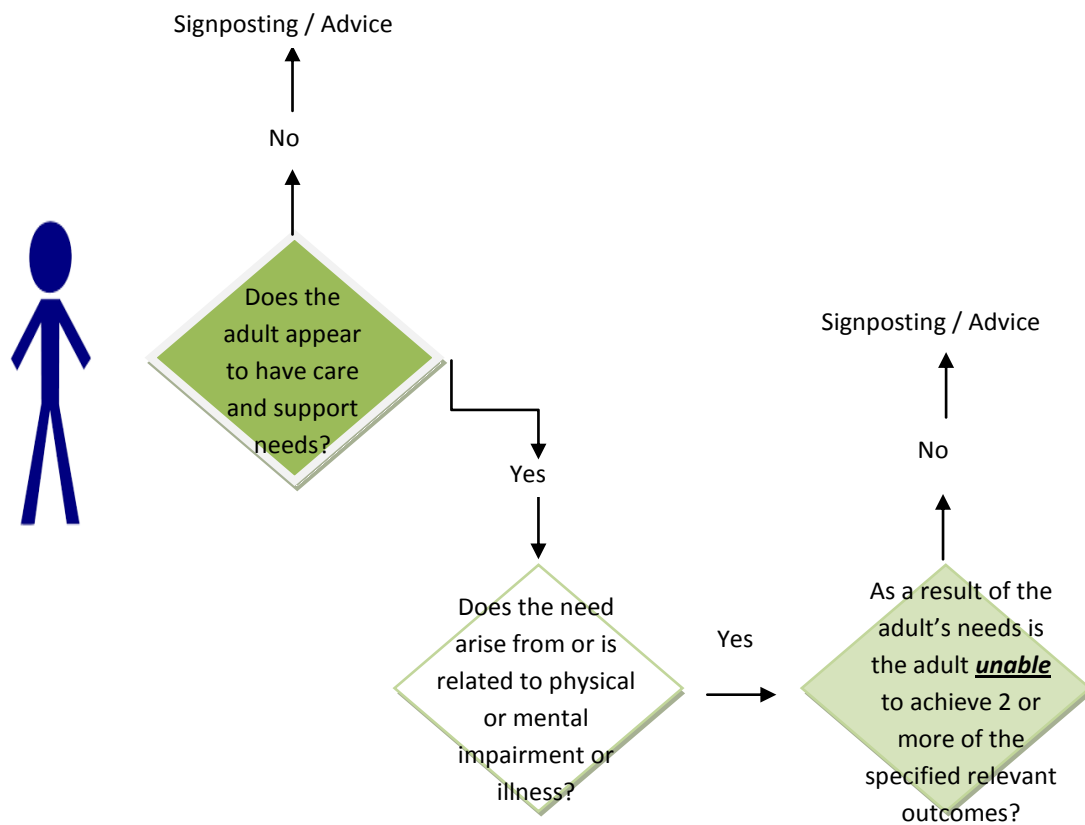
It should be noted, that even when someone fails to meet the test imposed by the conditions and, thereby, fails to meet the national minimum eligibility threshold the Council still has a statutory responsibility to offer signposting and advice under its general duty to provide advice and information, including independent financial advice, to the local population.


The next section unpacks this process in more details for adults in need of care and support.

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<sup>1</sup> A carer is defined as someone who does not provide care for payment or as a volunteer.

**Chart 1.** Determining Eligibility For Adults With Need Care and Support – An Overview



Condition of eligibility = 

### 3. DETERMINING ELIGIBILITY FOR ADULTS NEEDING CARE AND SUPPORT: THE STEPS

#### Step 1. Being clear about what is the National Eligibility Threshold

The Care Act's approach to eligibility is simple and hinges, as shown in Chart 1, on the response to the following questions:

1. Do the adult's needs arise from or are related to a physical or mental impairment or illness?
2. As a result of the adult's needs is the adult unable to achieve **two or more of the specified outcomes** (see Step 3, below)?
3. As a consequence of being unable to achieve these outcomes there is, or there is likely to be, **a significant impact** on the adult's wellbeing?

These three questions are the **conditions** that must be satisfied for someone to be deemed eligible. **To be eligible each question being answered, 'yes'.**

However, to determine eligibility it is important that a uniform, methodical approach is taken to interpreting the above questions and seeking answers to them. This matter is considered in the remaining steps contained within this section.

#### Step 2. Do the adult's needs arise from or are related to a physical or mental impairment or illness?

Local authorities **must** be satisfied that the adult's needs for care and support are due to a physical or mental impairment or illness and that they are not caused by other circumstantial factors. Local authorities **must** consider at this stage if the adult has a condition as a result of either physical, mental, sensory, learning or cognitive disabilities or illnesses, substance misuse or brain injury. Authorities should base their judgment on the assessment of the adult - a formal diagnosis of the condition should **not** be required.

#### Step 3. As a result of the adult's needs is the adult **unable** to achieve **two or more of the specified relevant outcomes**?

When considering the answer to this question/condition two things have to be considered.

First, what does **'unable'** mean? Second, what are the **'specified relevant outcomes'**? The statutory guidance is helpful with respect to both these matters and makes clear that **'unable' means:**

1. is unable to achieve the outcome without assistance;
2. is able to achieve the outcome without assistance but doing so causes the adult significant pain, distress or anxiety;
3. is able to achieve the outcome without assistance, but doing so endangers or is likely to endanger the health or safety of the adult, or of others;
4. is able to achieve the outcome without assistance but takes significantly longer than would normally be expected.

#### **The specified relevant outcomes are:**

1. **Managing nutrition:** For example, has the adult access to food and drink and can they prepare and consume food and drink.

2. **Maintaining personal hygiene:** - For example, the ability wash and launder clothes.
3. **Managing toilet needs:** For example, the adult is able to access and use a toilet and manage their toilet needs.
4. **Being appropriately clothed:** For example, the adult is able to dress and do so appropriately to maintain their health.
5. **Able to make use of the home safely:** For example, the adult is able to move around the home and its immediate environment safely.
6. **Maintaining a habitual home environment:** For example, the condition of the adult's home is sufficiently clean and maintained to be safe. A habitual home is safe and has essential amenities.
7. **Developing and maintaining family or other personal relationships:** For example, is the adult isolated or lonely because their needs prevent them from maintaining personal relationships or developing new relationships.
8. **Accessing and engaging in work, training, education or volunteering:** For example, the ability to contribute to society through work, training, education, education or volunteering.
9. **Making use of necessary facilities or services in the local community including public transport and recreational facilities or services:** For example, consider the adult's ability to get around in the community safely and consider their ability to use such facilities as public transport, shops or recreational facilities when considering the impact on their wellbeing.
10. **Carrying out any caring responsibilities the adult has for a child:** Local authorities should consider any parenting or other caring responsibilities the person has. The adult may for example be a step-parent with caring responsibilities for their partner's children.

**Step 4. Determining significant impact on wellbeing**

If:

1. an adult has care and support needs that arise from or are related to a physical or mental impairment or illness, and;
2. unable (as defined, above) to;
3. achieve 2 or more of the ten outcomes, then;
4. the last stage of determining eligibility consists of determining whether, or not, the failure to achieve these outcomes has a significant impact on the adult's wellbeing

Although 'wellbeing' is defined in section 1 of the Care Act, the word 'significant' is not **defined** in the Act or in statutory guidance and regulations. Therefore, it must be understood to have its everyday meaning. Local authorities have to make a judgement (a determination) about whether the adult's needs and their consequent inability to achieve relevant outcomes will have an important effect on their daily lives, independence and wellbeing.

In making this judgment, local authorities should look to understand the adult's needs in the context of what is important to him or her. Needs may affect different people differently, because what is important to the individual's wellbeing may not be the same in all cases. Circumstances which

create a significant impact on the wellbeing of one individual may not have the same effect on another.

## DETERMINING ELIGIBILITY FOR CARERS WITH SUPPORT NEEDS

*“Carers can be eligible for support whether or not the adult for whom they care has eligible needs. The eligibility determination must be made based on the carer’s needs and how these impact on their wellbeing. The determination should be made without consideration of whether or not the adult the carer cares for, has eligible needs”.*

Statutory Guidance, paragraph 6.123

### 5. OVERVIEW

The flow chart on the next page depicts the process to be followed when determining if a carer meets the national minimum eligibility threshold. While it is similar to that described in Chart 1 there are some important differences. First the basic conditions to be met when determining eligibility are different for carers. There is an emphasis on needs arising as a result of providing ‘necessary care’ while there are only eight relevant outcomes for carers (compared with ten for adults in need of care and support). To be eligible carers only have to be unable to achieve one, compared with two for the adults they care for, of these outcomes.

Second, the relevant conditions for carers are different from those specified for adults while the definition of ‘unable’ is also different/

Third, the language used in the Care Act and statutory guidance to describe situations of carers and cared for people differs. While the former are referred to as having support needs the latter are described as having care needs.

### 4. DETERMINING ELIGIBILITY FOR CARERS: THE STEPS

#### Step 1. Being clear about what is the National Eligibility Threshold

The Care Act’s approach to eligibility for carers is described in Chart 2 and is determined by the answers to the following questions:

1. Do the carer’s needs arise as a consequence of providing necessary care for an adult?
2. Do the effects of the carer’s mean that the adult is unable to achieve any of the specified outcomes<sup>2</sup>?
3. As a consequence is, or there is likely to be, a significant impact on the carer’s wellbeing?

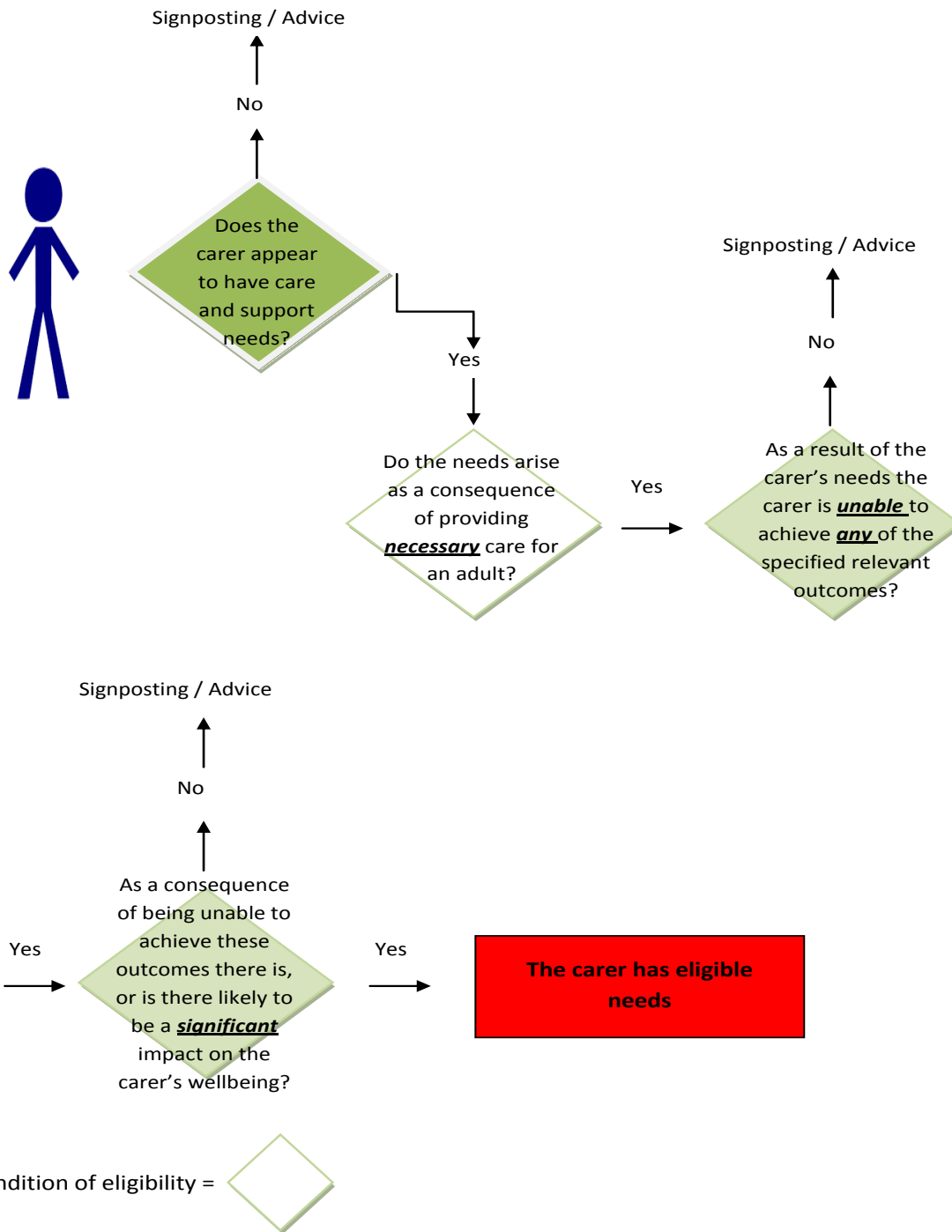
As before, all three questions are the conditions that must be satisfied for someone to be deemed eligible. To be eligible, the answer to each question must be ‘yes’.

At this point the rough guide returns to the task of interpreting the above questions and seeking answers to them. This matter is considered in the remaining steps contained within this section.

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<sup>2</sup> Specified in the Eligibility Regulations

**Chart 2.** Determining Eligibility For Carers With Support Needs– An Overview



**Step 2. Do the carer's needs arise as a consequence of providing necessary care for an adult?**

The carer must also be providing necessary care. If the carer is providing care and support for needs which the adult is capable of meeting themselves, the carer may not be providing necessary support. In such cases, the local authority should provide information and advice

to the adult and carer about how the adult can use their own strengths or services available in the community to meet their needs.

**Step 3. As a result of the adult’s needs is the adult unable to achieve any of the specified relevant outcomes?**

When considering this step it is useful to compare the overlapping, but different definition of the word ‘unable’ in the guidance to the Care Act:

<u>‘Unable’</u> with respect to carers means...	<u>‘Unable’</u> with respect to cared for adults means...
<ol style="list-style-type: none"> <li>1. is unable to achieve the outcome without assistance;</li> <li>2. is able to achieve the outcome without assistance but doing so causes the adult significant pain, distress or anxiety;</li> <li>3. is able to achieve the outcome without assistance, but doing so endangers or is likely to endanger the health or safety of the adult, or of others.</li> </ol>	<ol style="list-style-type: none"> <li>1. is unable to achieve the outcome without assistance;</li> <li>2. is able to achieve the outcome without assistance but doing so causes the adult significant pain, distress or anxiety;</li> <li>3. is able to achieve the outcome without assistance, but doing so endangers or is likely to endanger the health or safety of the adult, or of others;</li> <li>4. is able to achieve the outcome without assistance but takes significantly longer than would normally be expected.</li> </ol>

**The specified relevant outcomes for carers are:**

Local authorities **must** consider whether a carer is able to achieve these outcomes or if due to nature of their needs they are unable to achieve any of the outcomes.

To be eligible, a carer **must** be unable to achieve any of the following outcomes:

1. ***Carrying out any caring responsibilities the carer has for a child:*** For example, the carer might be a grandparent with caring responsibilities for a grandchild while the child’s parent are at work.
2. ***Providing care to other persons for whom the carer provides care:*** For example, a carer may also have caring responsibilities for a parent in addition to caring for the adult with care and support needs.
3. ***Maintaining a habitable home environment:*** For example, does the condition of the carer’s home provide a safe and appropriate environment to live in and does it presents a significant risk to the carer’s wellbeing.
4. ***Managing and maintaining nutrition:*** For example, has the carer the time to do essential shopping and to prepare meals for themselves and their family.

5. ***Developing and maintaining family or other significant personal relationships:*** For example, is the caring role preventing a carer from maintaining key relationships with family and friends or from developing new relationships.
6. ***Engaging in work, training, education or volunteering:*** For example, consider whether the carer can continue in their job, and contribute to society, apply themselves in education, volunteer to support civil society or have the opportunity to get a job, if they are not in employment.
7. ***Making use of necessary facilities or services in the local community:*** For example, consider whether the carer has an opportunity to make use of the local community's services and facilities e.g. the time to use recreational facilities such as gyms or swimming pools.
8. ***Engaging in recreational activities:*** For example, has the carer leisure time.

#### **Step 4. Determining significant impact on wellbeing**

The third condition that must be met is that local authorities must consider whether the carer's needs and their inability to achieve the outcomes above present a *significant* impact on the carer's wellbeing. However, as with cared for adults, this word is not defined and it must be understood in its everyday sense. As previously stated, local authorities have to make a judgement (a determination) about whether the adult's needs and their consequent inability to achieve relevant outcomes will have an important effect on their daily lives, independence and wellbeing. *In making this judgment, a carer's support needs must be understood in the context of what is important to them and it remembered that what has a significant on the wellbeing of one individual may not have the same effect on another.*