



Cyngor Castell-nedd Port Talbot  
Neath Port Talbot Council

# **Adult Services Fairness of Service Provision Policy**

## **October 2019**

This document is also available in Welsh

***Building Safe and Resilient Communities***

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[www.npt.gov.uk](http://www.npt.gov.uk)

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## 1. Introduction

Neath Port Talbot County Borough Council ('the Council') is committed to ensuring that all people with an assessed eligible care and support need receive high quality, sustainable and personalised responses to meet that need and help them to achieve their agreed personal outcomes.

Over the years the Council has seen an increase in the number of people with an eligible care and support need. This increase is set against a background of increasing financial pressures due to reduced funding from central government.

## 2. Aims of the Policy

The Council is committed to supporting its most vulnerable citizens and ensuring that those who require support are provided with as much choice and control as is consistent with the meeting of need in a way which is efficient, effective and fair to all in need and for whom the council must make provision.

In doing so, when undertaking an assessment or reassessment of individuals' needs, the Council will take into account the social care resources available when considering how those needs might be met.

## 3. Legal Framework

The Social Services and Well-being (Wales) Act 2014 ('the Act'), and regulations made and Codes of Practice issued under it, is the legislative framework that sets out the Council's duty to assess an individual's need for care and support services. The Council will have a duty to meet that need if the need meets statutory eligibility criteria and cannot be met by the person's own resources or community resources.

The Council will follow rigorously the assessment and review process laid down under the Act, key elements of which are set out below:

**Section 2** of the Act places a well-being duty on the Council in relation, among other things, to the individual's:

1. a. physical and mental health and emotional well-being
1. d. domestic, family and personal relationships
1. h. suitability of living accommodation
4. a. control over day to day life

The Council has a duty under **Section 5** to ‘promote the well-being of people who need care and support.’

**Section 6** provides for other overarching duties, including:

- 6.2. as far as is reasonably practicable, ascertain and have regard to the individual’s views, wishes and feelings
- 6.3.a. a presumption that the adult is best placed to judge the adult’s well-being
- 6.3.b. the importance of promoting the adult’s independence where possible

**Section 15** places a duty upon the Council to provide or arrange for the provision of a range and level of services which it considers will:

- 15.2.i. enable people to live their lives as independently as possible

**Section 19** places a duty to assess need for care and support that:

- 19.4.a. identifies the outcomes that the adult wishes to achieve in day to day life.
- 19.4.b. assess whether care and support etc. could contribute to the achievement of those outcomes or otherwise meet the needs identified.

This is underpinned by the principle that goals or outcomes should be identified jointly with an individual, and that the individual must feel themselves an equal contributor to the care and support plan.

It must be recognised that some of these could be affected if the individual was unhappy with the proposed means of meeting their need, particularly if they felt compelled to move into residential accommodation.

**The Council is not, however, bound to meet a need in the way preferred by an individual, particularly where the cost of that preferred way is higher than other reasonable ways.**

Under **Section 32**, in making a decision on eligibility and consideration of what to do to meet needs, we must determine:

- 32.1 – if a person needs care and support
  - a. determine whether any of the needs meet the eligibility criteria.
- 32.2 – if needs must be met, consider what could be done to meet the needs

**Section 34** gives examples of how needs might be met, and includes residential accommodation, and care and support in the community, as valid options.

Regulations made under the Act repeat the requirement to have regard to the desired outcomes, and also list matters which are a relevant part of the assessment as potentially eligible needs. These include:

- involvement in work, education, learning or in leisure activities;
- maintenance or development of family or other significant personal relationships;

When a multidisciplinary assessment indicates that care in a nursing or residential home is the most appropriate place to meet all the individual's care needs, the individual, their advocate, family and/or carers ('their representative') should be assisted and supported to choose a suitable and available home of their choice.

### **The Mental Capacity Act 2005**

The Mental Capacity Act 2005 ('MCA') should be considered in implementing this Policy in each case as may be appropriate. The MCA introduced important safeguards for people who lack capacity and the people who work with, support and care for them. In consequence any person who is assessed to lack capacity should be placed at the heart of decision making and provided with appropriate support to enable the individual to make his/her own decisions where possible. Even if they are unable to do this, then the person should be involved in the decision-making process as far as possible.

The five principles which apply in all circumstances in relation to the implementation of this Policy are as follows:

- A person **must be assumed** to have capacity unless it is proved otherwise that he/she lacks capacity. This means that you cannot assume that someone cannot make a decision for themselves just because they have a particular medical condition or disability, or because they are of a particular age or appearance.
- A person is not to be treated as unable to make a decision unless **all practicable steps** to help him or her to do so have been taken without success. This means that you should make every effort to encourage and support the person to make the decision for himself/herself.
- People have the **right to make** what others might regard as **unwise**

**decisions.** We cannot say because we think the decision is unwise that the person does not have the capacity to make the decision.

- Anything done for or on behalf of a person who lacks mental capacity must be done in their **best interests**.
- Anything done for, or on behalf of, people without capacity should be **the least restrictive** of their basic rights and freedoms. This means that when you do anything to or for a person who lacks capacity you must choose the option that is in their best interest and least restricts the person's freedom and rights.

A formal capacity assessment should be undertaken in respect of any decision where the mental capacity of the person is disputed. If there is any doubt as to whether a person lacks capacity, this should be decided on the balance of probabilities.

#### **4. Principles of Providing a Service**

When commissioning services, the Council will make a determination as to what interventions can best meet the person's identified assessed needs and agreed desired outcomes in a way that is equitable and sustainable, whilst offering maximum choice and control in regards to the care they receive.

Sometimes a person may wish to access service(s) that are more costly than the service(s) identified by the Council as available and capable of meeting their assessed needs and agreed desired outcomes. In these cases, the person will be offered, through the use of Direct Payments, the opportunity of accessing a more expensive service than the services identified by the Council by paying the additional cost from their own resources.

In all cases the Council will fund a service that meets the eligible assessed needs of, and agreed desired outcomes for, the person, or will provide Direct Payments at a level which it estimates to be equivalent to the reasonable cost of securing the provision of that care and support, and a person will be asked to contribute towards the cost of that service solely in accordance with regulations made under the Act. When setting the level of Direct Payments the Council will be mindful of the need to ensure an element of preference.

## **5. Assessing Need**

It is vital that the individual or their representative is made fully aware that any care review constitutes a reassessment of the individual's needs, and the most appropriate means by which these may be met, which means that the individual's care package may alter as a result.

## **6. Principles of Charging for Services**

The restrictions upon the maximum amount which a person may be charged as a contribution towards the cost of non-residential care and support, set by the Welsh Assembly by regulation, mean that in order to offer the element of choice in 4. above, a person must be provided with Direct Payments, as defined in the Act, which they can use to purchase care and support services from a third party provider.

The Council will be concerned to see that the care and support services purchased meet the assessed need and achieve personal outcomes but, beyond that, it is entirely a matter for the person to decide whether they wish, and are able, to purchase more costly care and support at their own expense.

Where the Council properly concludes that it is reasonable for a person's needs to be met through the provision of funding of residential care, the cost of which would be less than that of non-residential care and support, but a person does not wish to enter residential care and is willing and able, as above, to pay the additional cost of non-residential care, the Council will:-

1. Take as the residential care cost comparator a figure which fairly reflects the cost of a reasonable choice of residential accommodation within a reasonable distance from the person's home; and
2. Exclude from its calculations any sum which the person could properly be required to pay towards the cost of either non-residential care and support or residential care. This is important, given the far greater contribution which may be required from an individual towards the cost of residential care than the capped contribution towards the cost of non-residential care and support.

## **7. Ordinarily Resident**

The Social Services Authority where the individual is *ordinarily resident* will be responsible for assessing and arranging their care but may commission Neath Port Talbot Social Services to assist with arrangements on their behalf.

When NHS nursing home care is required, the care will be arranged by the Social Services Department from where the person is ordinarily resident and by the Health Board Locality where the person is to be placed for their long-term NHS Funded Nursing Care. Where the person's needs are to be met under NHS Continuing Health Care, if the person is to be placed within the catchment area of Neath Port Talbot, then the respective Health Board Locality will be responsible for arranging and managing the placement.

Persons from Neath Port Talbot placed within neighbouring Health Board areas, will be managed in line with the choice policies of the Health Board in which the person is placed.

In the event of the person's condition changing or deteriorating significantly, the application of this process should be suspended and a reassessment should commence once the person is deemed medically fit for transfer of care by the clinician and the Multi-Disciplinary Team. In the event of any change taking place which may affect the person's capacity to make this decision at any stage of the process, then this process will be suspended and the policy for a person without capacity will be applied.

## **8. Preference for Particular Accommodation**

Where a person has expressed a preference for particular accommodation, and complies with the requirements of the Act and regulations made under the Act, they will be required to pay the additional cost as defined as a condition of the Council providing or arranging, or continuing to provide or arrange, the preferred accommodation. Where the preferred accommodation is outside of the Council's area, and suitable accommodation in area is, or would be, available, then the cost from which any additional cost is calculated under S.57(3) shall be the usual cost of in-area accommodation. Where no in-area accommodation is available, then the cost for the purposes of S.57(3) shall be that usually incurred by the local authority in which the preferred accommodation is situated.

## **9. Review and Termination of Service**

All care packages are required by law to be subject to a minimum of an annual review to ensure they remain the most appropriate option for the individual's care and support needs.

## **10. Complaints / Appeals Procedure**

Should a person who accesses services or their carer wish to challenge any decisions made, (s)he should refer to the Council's appeals procedure. This process has a clear route of appeal and timescale for handling appeals.

Individuals and/or their carers should be provided with information explaining how to complain about Social Services in Neath Port Talbot, which is available in accessible formats and different languages. The leaflet and details of the complaints procedure can also be accessed online via the Council's website [www.npt.gov.uk](http://www.npt.gov.uk). The dedicated Adult Services Complaints telephone number is (01639) 763445, or via email: [complaints@npt.gov.uk](mailto:complaints@npt.gov.uk)

## **11. Review of the Policy**

The policy reflects the Council's current position and will be reviewed annually.