

# Care Act training - determination of eligibility

## Legal duties and impact on individuals

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This theme explores what determination of eligibility is, the legal duties from the Regulations, including an explanation of the legal terms and 'myth busters'.

This document supports learning from a wider set of resources about the Care Act duties around determination of eligibility and impacts on individuals, the training videos can be accessed here: <https://www.scie.org.uk/care-act-2014/legal-impact/determination-eligibility>

### Key messages

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#### What?

- The duty is to determine if the assessed needs (needs identified during the assessment) are eligible for care and support.

#### When?

- The determination of eligibility takes place after an assessment has been completed.

#### Who?

- Social care practitioner (even in a self-assessment).

#### How?

- There are three sequential questions that should be answered using evidence gathered from the assessment and professional analysis/judgment (following regulations); which must be answered in sequence:

“An adult’s needs meet the eligibility criteria if—

(a) the adult’s needs arise from or are related to a physical or mental impairment or illness;

(b) as a result of the adult’s needs the adult is unable to achieve two or more of the outcomes specified in paragraph (2); and

(c) as a consequence there is, or is likely to be, a significant impact on the adult’s well-being” (**The Care and Support (Eligibility Criteria) Regulations 2014**).

- For the first criteria there is no need to have a diagnosis and the impairment or illness does not have to be long term.

For the second criteria the social care practitioner must specify how the individual is unable to achieve the identified outcomes.

(c) the significant impact on the adult’s – the one the social care practitioner is interacting with – wellbeing.

- When determining eligibility the social care practitioner must not consider what the unpaid carer is doing – should be ‘carer blind’.

“A carer’s needs meet the eligibility criteria if—

(a) the needs arise as a consequence of providing necessary care for an adult;

(b) the effect of the carer’s needs is that any of the circumstances specified in paragraph (2) apply to the carer; and

Paragraph 2 - Is the carer's physical or mental health affected or at risk of deteriorating, or is the carer unable to achieve any of the listed outcomes?

(c) as a consequence of that fact there is, or is likely to be, a significant impact on the carer’s well-being” (**The Care and Support (Eligibility Criteria) Regulations 2014**).

- The three criteria above must be answered in sequence.
- (b) is a double question, it is not only related to ability to achieve specified outcomes.
- ‘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.
- The cared-for person does not need to even be known to social services and care does not have to be substantial or regular.
- (c) the significant impact on the carer’s – the carer that the social care practitioner is interacting with – wellbeing.

### **Specified/eligibility outcomes** provided in the regulations:

- There are 10 eligibility outcomes for an adult.
- There are nine eligibility outcomes for a carer.

The regulations and statutory guidance must be used when responding to the second question/criteria for determining eligibility to ensure compliance with the law.

- The Care Act is clear that the use of the eligibility outcomes is during the determination of eligibility and not during the assessment process.
- There is a need to clarify whether the adult/carers is able/unable to achieve each specified outcome and how, as those outcomes that they are unable to achieve will determine which needs from the assessment are eligible.

**Unable to achieve** is a legal term. There are four options that can be used to deem an adult as unable to achieve a specified outcome, and three options for a carer.

“For the purposes of this regulation an adult is to be regarded as being unable to achieve an outcome if the adult—

(a) is unable to achieve it without assistance;

(b) is able to achieve it without assistance but doing so causes the adult significant pain, distress or anxiety;

(c) is able to achieve it without assistance but doing so endangers or is likely to endanger the health or safety of the adult, or of others; or

(d) is able to achieve it without assistance but takes significantly longer than would normally be expected” (**The Care and Support (Eligibility Criteria) Regulations 2014**).

- A person may be unable to achieve an outcome even if they are physically and/or cognitively able to do so independently.
- (d) does not apply to carers.
- It is important to not replace ‘unable’ with ‘can’t’/‘struggle to’, etc.

### **Significant impact**

- Significant impact on individual wellbeing is subjective but we must make a determination based on its everyday meaning in the context of what is important to, and for, the person as recorded in the assessment.
- To identify eligible needs we must determine how the inability to achieve the outcomes does or could impact on the individual’s wellbeing.

- The impact on wellbeing could be single, could be cumulative, could be multiple or consecutive, etc.

To comply with the Care Act, these terms must be used as per their legal meaning.

### Key misunderstandings

- Diagnosis does not mean a person is eligible, and lack of diagnosis does not mean they are not eligible.
- Determination of eligibility is not part of the assessment intervention, but occurs after its completion. It is not an assessment of eligibility, but a determination of eligibility.
- Determination of eligibility is done by the social care practitioner, who should explain to the adult/carer the thought process and the outcome.
- There aren't eligible outcomes – there are specified or eligibility outcomes to be used to determine eligibility (not during the assessment).
- Individuals (adults and carers) are not eligible for services, but eligible for care and support.
- Please ensure you are fully familiar with the contents of the Care Act, its Regulations, and the Care Act guidance to ensure full compliance.

As professionals we need to support our eligibility decisions with evidence. The Act is clear that we need to evidence the decision-making process.

### Reflective questions

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Find below a set of reflective questions that will help you embed the above key messages in your social care practice.

1. Do you have enough evidence in the assessment of needs/carer assessment about all of the needs identified for the adult/carer that will enable you to professionally determine eligibility?
2. Have you had the Regulations exact phrasing in front of you?
3. Have you identified specific eligible needs? Have you linked each outcome that the carer/adult is **unable** to achieve with an assessed need?
4. Have you been 'carer blind' in the determination of eligibility for the adult?
5. Have you responded to the three questions/criteria in sequential order?
6. Have you recorded the rationale for your responses/decisions?

## Further resources

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- Care Act Statutory Guidance - <https://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance>
- Care Act 2014 - <https://www.legislation.gov.uk/ukpga/2014/23/contents/enacted>
- Determination of eligibility under the Care Act <https://www.scie.org.uk/care-act-2014/assessment-and-eligibility/determination-eligibility#:~:text=An%20eligibility%20determination%20can%20only,determining%20eligibility%20for%20an%20adult>