

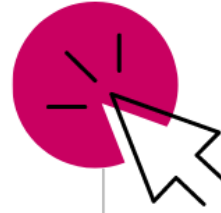


Forward Carers Birmingham- Legal Rights Training

Adult Social Care – Supporting Adults with Needs

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Vision:
a fairer, more just
society in which an
understanding of
rights and their power
is embedded within
communities



A PROGRESSIVE ORGANISATION

The legal rights offered through legislation and local and national policies are enhanced to provide greater protection and more effective support for those who need it most



AN OPEN & COLLABORATIVE ORGANISATION

The social action and social justice work of organisations, practitioners and activists becomes more effective in enhancing the legal capabilities of local communities



A TRUSTED ORGANISATION

More people are protected by their rights, leading to greater prosperity and resilience for individuals and saving systems from the negative effects of crisis

Contents



1. Overview

2. The Care Act 2014



Overview

- Adult social care legal framework vast.
 - ***Duties and powers of public authorities towards those in need of care support/services and carers' support.***
- Found in:
 - ***Legislation*** (e.g. [Care Act 2014](#)).
 - ***Regulations, Directions, Statutory Instruments*** (e.g. [The Care and Support \(Eligibility Criteria\) Regulations 2015](#)).
 - ***Guidance*** (e.g. [Care & Support Statutory Guidance](#)).
 - ***Common Law*** - decided cases setting precedents interpreting law (e.g. [R \(on the application of McDonald\) \(Appellant\) v Royal Borough of Kensington and Chelsea \(Respondent\) \[2011\] UKSC 33](#) & [McDonald v United Kingdom ECtHR, Application no. 4241/12](#)).



The Care Act 2014

The Care Act 2014 - Summary



Care Act 2014 (+ regulations, directions, guidance etc.) sets out **duties** and **powers** of councils to '**adults**' and '**carers**'.

Duties and powers to:

- **Assess needs.**
- **Decide what support required** to meet needs.
- Develop **support plans.**
- **Provide support** to meet needs.
- Provide **advocacy.**
- Promote **well-being.**
- **Prevent/delay needs** for care and support arising.
- **Integrate** services with NHS and other partners.
- Provide **information** and **advice.**
- **Shape market** - variety and quality care provision
- **Safeguard** vulnerable adults.

Assessments and decisions of councils re care/support not (generally) subject to appeals process – only **complaints or Judicial Review.**

The Care Act 2014 - Summary



Coronavirus Act 2020 introduced 'easements' from several key duties – but relevant sections have now been revoked – so Care Act 2014 should now be fully operating.

- Assessment is process of establishing ***whether there are needs, what needs are*** and ***whether help required*** to meet needs.
- Includes assessment of adults (s9) and assessment of carers (s10).
- Under **Care Act 2014** the duty to assess arises:
 - ***For adults*** - where it appears to a local authority that an adult ***may have needs*** for care and support (s9).
 - ***For carers*** - where a carer ***may have needs*** for support (whether currently or in the future) (s10).
- **Care Act 2014** and **Care & Support Statutory Guidance** sets out how assessments should be carried out.

Assessment Continued...

- Assessments should be **appropriate** and **proportionate** to needs and circumstances (i.e. more extensive/complex needs will require more in depth assessment) ([para 6.3](#), [paras 6.39-6.53](#))
- Assessments should be carried out to **enable participation** and should include persons adult wants to be involved ([paras 6.9-6.10](#)).
- Assessments consider ([s9](#), [para 6.9](#)):
 - impact on **well-being**,
 - **outcomes** person wants to achieve and
 - whether anything other than provision of care/support might achieve outcomes (e.g. providing information and advice).
- Assessments under [Care Act 2014](#) consider **all** care and support needs, regardless of support already in place to meet these ([para 6.15](#)).

Assessments Continued...

- Carers' assessments also consider (s10, para 6.18):
 - Whether carer is **willing and able** to provide care (now and in future).
 - Whether the carer works/wishes to work.
 - Whether the carer is participating in/wishes to participate in education, training or recreation.
- Councils have **duty to provide adult/carer with a copy of the assessment** (s12(3)).

Decisions About Support Needs



- Following assessment a **decision** is taken about whether support is required to meet needs (s13).
- Decision made in line with **national eligibility criteria** (set out in [Care and Support \(Eligibility Criteria\) Regulations 2014](#)).
- Allows 'portability' of care if service-users move, as needs at same level enable access to support in different areas.

Decisions About Needs Continued...

- For **adults**:
 - **Eligible** for support where: **(1) needs arise from/related to a physical or mental impairment or illness; (2) as a result of needs adult unable to achieve two or more outcomes and (3) as a consequence there is, or is likely to be, a significant impact on the adult's well-being.**
 - **Outcomes** - managing and maintaining nutrition, maintaining personal hygiene, managing toilet needs, being appropriately clothed, being able to make use of the adult's home safely, maintaining a habitable home environment, developing and maintaining family or other personal relationships, accessing and engaging in work, training, education or volunteering, making use of necessary facilities or services in the local community including public transport and recreational facilities or services, and carrying out any caring responsibilities the adult has for a child.
 - **Unable to achieve outcome where** - unable to achieve without assistance; doing without assistance causes the adult significant pain, distress or anxiety; doing without assistance endangers (or is likely to endanger) health or safety of adult or others; or doing without assistance takes significantly longer than normally expected.

Decisions About Needs Continued...

- For **carers**:
 - **Eligible** for support where: *(1) needs arise as a consequence of providing necessary care for adult; (2) effect of the carer's needs is that any of circumstances below apply to carer; and (3) as a consequence there is (or is likely to be) a significant impact on carer's well-being.*
 - **Circumstances** - carer's physical or mental health is (or at risk of) deteriorating or carer unable to achieve following outcomes.
 - **Outcomes** - carrying out caring responsibilities for a child, providing care to other persons, maintaining a habitable home environment in carer's home, managing and maintaining nutrition, developing and maintaining family or other personal relationships, engaging in work, training, education or volunteering, making use of necessary facilities or services in local community, including recreational facilities or services, and engaging in recreational activities.
 - **Unable to achieve where** - unable to achieve without assistance, doing without assistance causes carer significant pain, distress or anxiety or doing without assistance endangers (or likely to endanger) health or safety of the carer or others.

- Councils have a **duty** to meet **eligible needs** of **adults** (s18).
- Councils have a **duty** to meet **eligible needs** of **carers** (s20).
- Councils also have discretionary **powers** to meet **non-eligible needs** of adults (s19) and carers (s20).

- Following assessment and decision about support needs, councils should produce care and support plan ([ss24-25](#)).
- Plan ***should include***:
 - ***Needs*** identified through assessment.
 - Whether needs ***meet eligibility criteria***.
 - ***What needs council will meet and how***.
 - What ***outcomes*** will be met through provision of support.
 - ***Personal budget***.
 - Information and advice on ***reducing needs*** and ***preventing/delaying development of future needs***.
 - + for carers ***views and wishes about providing care***, and work, education and recreation.
- The care and support plan to be kept under review ([s27](#)).

Providing Support to Meet Needs



- Eligible needs can be ***met in lots of different ways*** including – but not limited to -(s8):
 - Accommodation in a care home or in premises of some other type.
 - Care and support at home or in the community.
 - Counselling.
 - Purchasing goods, equipment or facilities.
 - Access to information, advice and advocacy.
- Councils can ***provide services directly, commission from elsewhere*** or ***make direct payments*** with which adult of carer can procure own services.

- Councils **can charge** for services provided to adults under [s18](#) or carers under [s20](#) ([s14](#)).
- Different schemes depending on whether support/services residential or domiciliary/other.
- Before charge imposed financial assessment ([s17](#)) to establish level of resources and ability to pay (incl. consideration of any disability related expenditure, realising value of property and minimum income guarantee etc.).
- Total cap on costs for care (at £86,000) due to be introduced in October 2023. This only covers personal care – not ‘hotel’ and accommodation costs. Only covers care to meet **eligible** needs (for self-funders).

- Duty on councils to provide **independent advocate** (ss67-68) where adult may have “substantial difficulty” in (s67(4)):
 - **Understanding** relevant information.
 - **Retaining** that information.
 - **Using or weighing up** that information.
 - **Communicating** their wishes and feelings.
- Duty does not *generally* arise where is **appropriate person** to support/represent instead ([Care and Support \(Independent Advocacy Support\) \(No.2\) Regs 2014](#)).
- Duty to provide advocate applies to (s67(3)) :
 - Adult needs assessments.
 - Carers’ assessments.
 - Preparing care/support plans.
 - Reviewing care/support plans.

Advocacy Continued...

- Advocates role to ***assist adult/carer*** to (Care and Support (Independent Advocacy Support) (No.2) Regs 2014):
 - Obtain care/support.
 - Promote well-being.
 - Ascertain wishes, views and feelings of adult or carer.
 - Assist adult or carer to make decisions about care/support.
 - Challenge council decisions where needed.
 - Ensure adult or carer accesses support entitled to, make representations, prepare reports for review where necessary.
 - Bring legal proceedings if disputes cannot be resolved.

- Councils have general duty to ***promote ‘well-being’*** of individuals ([s1\(1\)](#)).
- Well-being includes - personal dignity, physical and mental health and emotional well-being, protection from abuse and neglect, control over day-to-day life, participation in work, education, training or recreation, social and economic well-being, domestic, family and personal relationships, suitability of living accommodation, and the individual’s contribution to society ([s1\(2\)](#)).
- ***No hierarchy*** of different aspects of well-being ([para 1.5](#)).

Wellbeing Continued...

- Promoting well-being requires councils to recognise ([paras 1.7-1.17](#)):
 - Individual often best placed to judge own well-being.
 - Individual's views, wishes, feelings and beliefs.
 - Preventing, delaying or reducing need for care support.
 - Relevant circumstances.
 - Avoiding assumptions based on age, appearance or condition.
 - Maximising participation.
 - Balance between well-being of adult and carers.
 - Protection from abuse and neglect.
 - Minimum restriction of rights and freedoms.
- Duty ***applies to commissioning, as well as to assessment, decision-making and support planning*** for individuals ([paras 1.2-1.3](#)).

Preventing Needs for Care & Support



- Councils have duty to provide or arrange for provision of services, facilities or resources to ***prevent, delay or reduce needs*** for care and support ([s2\(1\)](#)).
- Duty applies to ***adults*** and ***carers***.
- To achieve, councils need to ([s2](#), [paras 2.3](#), [2.6](#), [2.7-2.11](#)):
 - Identify existing services, facilities and resources.
 - Identify adults with unmet care and support needs.
 - Identify carers with unmet support needs.

- Councils under general duty under to ensure integration of care and support services with health provision and health-related provision ([s3](#)) in:
 - delivery of **care** to adults
 - to carers
 - and arranging **preventative services/resources/facilities** (incl. strategic planning and commissioning [para 15](#)).
- Duty exists where integration would ([s3](#)):
 - promote well-being of adults and carers in area with needs.
 - contribute to prevention or delay of development of needs of adults and carers.
 - Improve quality of care/support for adults and carers in area.

- ***Joined-up working*** with NHS England, CCGs, NHS Trusts, police, prisons, probation, DWP, Job Centres etc. ([para 15.21](#)) incl. establishment of 'Better Care Fund'.
- Links with parallel cooperation duties ([ss3, 6, 7, 22, 23, 74 and Sched 3, and duties in Care and Support \(Provision of Health Services\) Regulations 2014](#)).

- Councils must **establish and maintain information and advice service** about care/support area ([s4](#)).
- Coherent, sufficient, available and **accessible** to adults and carers (paras [3.2-3.3](#)).
- Services must enable adults to **understand care system** and how it operates, including ([s4\(2\)](#)):
 - Choice.
 - How to access care.
 - How care services operate.
 - Charging and accessing financial advice.
 - How to raise safeguarding/well-being concerns.

- Councils have general duty to ***promote ‘efficient’ and ‘effective’ local market***(s5).
- Ensures ***variety of care/service providers*** and ***high quality services*** to choose from (s5 and paras 4.37-4.49) and sustainability (paras 4.35-4.36).
- Guidance encourages shift to ***‘outcomes based’ commissioning*** (paras 4.12-4.20).

- Councils have duty to conduct safeguarding *enquiries* where(s42):
 - ***Reasonable cause to suspect*** adult who has needs for care and support (whether or not council meeting those needs) is experiencing (or at risk of) ***abuse or neglect*** and;
 - As a result of needs, adult is ***unable to protect self*** against abuse or neglect.

Safeguarding Continued...

- Guidance provides broad, ***non-exhaustive list*** of what constitutes abuse/neglect ([para 14.17](#)):
 - Physical abuse
 - Domestic violence
 - Sexual abuse
 - Psychological abuse
 - Financial/material abuse
 - Modern slavery
 - Discriminatory abuse
 - Organisational abuse
 - Neglect and acts of omission
 - Self-neglect

Safeguarding Continued...

- Safeguarding underpinned by **6 key principles** – **empowerment, prevention, proportionality, protection, partnership** and **accountability** (para 14.13).
- Scope - enquiries considered **necessary** to determine action to be taken - proportionate response required to circumstances.

Safeguarding Continued...



- Duty to establish Safeguarding Adults Board (SAB) to ***coordinate safeguarding activity*** amongst local bodies/organisations ([s43](#)).
- Multi-agency members – incl. councils, NHS bodies and police.
- SAB required to:
 - Meet regularly to consider safeguarding issues/cases.
 - Publish shared safeguarding plans.
 - Publish annual report.

- Councils have duty to convene Safeguarding Adults Reviews (SAR) (s.44):
 - where adult with needs in area **died** from abuse/neglect or been **subject to serious abuse/neglect**, and
 - **reasonable cause for concern** about how SAB/members/other persons worked together (or otherwise) to safeguard adult.



Thank You

Do you have any Questions?

