

The Care Act 2014

what does it really mean for carers?

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Topics considered

- The rights of adult carers (caring for another adult);
- Parent carers;
- Young carers
- Carers & COVID-19 – how are carers rights affected?
- Questions & discussion

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[The authoritative guide to the rights of disabled children and young people
families to social care, healthcare and education support](#)

Written by Steve Broach and Luke Clements (Legal Action Group 2020).

Coverage includes: understanding disabled children's lives – legal fundamentals – children's services – education – health – housing – decision-making – carers – equality and non-discrimination – transition to adulthood – remedies

The importance of evidence

Evidence

Well-being – presumption that that the adult is best placed to judge' their well-being (s1(3));

Care plan – duty on council to give reasons for why it believes a care plan will meet the needs

Reviews – if they result in a reassessment – there is a need for evidence as to what this was;

Reductions in support – evidence that the carer is willing to undertake the extra caring that results

Key provisions, definitions and principles

Key legal provisions

Key Acts

Adults caring for other adults ~ Care Act 2014

Parent Carers ~ Children Act 1989 & Care Act 2014;

Young Carers ~ Children Act 1989

Key guidance

Statutory Guidance to the Care Act 2014;

Definitions

Adult

- 'in need'
- has 'a physical or mental impairment or illness'.

Carer

- an adult who provides or intends to provide care for someone but not employed to do this.

Principles (section 1)

The duty on local authorities to promote the well-being of carers and adult's in need

Well-being

“Well-being” relates to:

- (a) personal dignity
- (b) physical / mental health / emotional well-being;
- (c) protection from abuse and neglect;
- (d) control over day-to-day life inc nature of care provided;
- (e) participation in work, education, training or recreation;
- (f) social and economic well-being;
- (g) domestic, family and personal relationships;
- (h) suitability of living accommodation;
- (i) the adult’s contribution to society.

Well-being

“Well-being”

LA must have regard to—

- (a) assumption that the ‘individual’ is best placed to judge well-being;
- (b) individual’s views, wishes and feelings;
- (c) take into account all the individual’s circumstances (and non-discriminatory in terms of stereotyping etc);
- (d) individual participating (with support if needs be) as fully as possible in decisions about them;
- (e) a balance between the individual’s well-being and that of any friends or relatives involved in their care;
- (f) the need to protect people from abuse and neglect;
- (g) any restrictions kept to the minimum necessary.

Willing and able

There is no duty to care for family members – this Poor Law obligation was abolished by the National Assistance Act 1948 section 1.

Councils must:

- not assume that a carer is able and/or willing to provide (& continue to provide) care (s10(5));
- Identify whether the carer works or wishes to (and / or) to participate in education, training or recreation (s10(6)).

Assessing 'need'

Assessing need

“What if”

- What will happen if care and support is not available?
- The greater the risk to the person’s well-being the greater the onus is on the LA to meet that need – or to give cogent reasons as to why this is not necessary.
- Well-being includes physical, mental, social and emotional well-being as well as the ability to engage in employment, education, training, leisure and social activities.

Assessment of adults in need

section 9

Duty 'to involve carer'

Carer blind assessments

- LAs must consider all of the adult's care ... needs, regardless of any support being provided by a carer. ... information on the care that [the carer provides]... can be captured during assessment, but it must not influence the eligibility determination.(para 6.15)

An adult's needs meet the eligibility criteria if—

- (a) the needs are caused by 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** outcomes; and**
- (c) as a consequence there is, or is likely to be, a **significant** impact on the adult's well-being.**

Unable to achieve 2 or more of:

- (a) managing and maintaining nutrition;**
- (b) maintaining personal hygiene;**
- (c) managing toilet needs;**
- (d) being appropriately clothed;**
- (e) being able to make use of the adult's home safely;**
- (f) maintaining a habitable home environment;**
- (g) developing and maintaining family or other personal relationships;**
- (h) accessing and engaging in work, training, education or volunteering;**
- (i) making use of necessary facilities or services in the local community including public transport, and recreational facilities or services; and**
- (j) carrying out caring responsibilities the adult has for a child.**

unable to achieve an outcome if —

- (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.**

Guidance para 6.106

maintaining a habitable home environment.

- whether the condition of the adult's home is sufficiently clean and maintained to be safe. A habitable home is safe and has essential amenities. An adult may require support to sustain their occupancy of the home & to amenities, such as water, electricity, gas.

Housework / nutrition

Complainant receiving a PB (paid as a DP) to cover her eligible needs;

On review:

- Although no change her PB (ie her DPs) reduced by 7 hours pw
- Reduction for: (a) 'nutrition' need and (b) 'maintaining 'habitable home' need.

In both cases this justified by saying that her DLA should be used to pay for these.

Housework / nutrition

Ombudsman noted:

The Care Act 2014 places a duty on councils to:

- assess a need of care and support.
- decide what the person's 'eligible needs' are – ie:
 1. needs result of a physical or a mental condition.
 2. because of those needs, they cannot achieve two or more of 10 specified outcomes;
 3. this has a significant impact on their wellbeing.
- Where eligible needs are identified these must be met

Housework / nutrition

Ombudsman noted:

I can see nothing in the Care Act 2014 or the statutory guidance which allows the Council to require a person to use their benefits this way.

Haringey LBC 16 012 715 12 June 2017 (para 36)

Making use of necessary facilities or services in the local community

A 2018 ombudsman complaint concerned a disabled person who had a mobility car. Although he was unable to drive it, the council decided that his parents should drive it – taking him to and from his day centre.

- The ombudsman held that it was maladministration for the council to have failed to consider the impact that this would have on their health, their loss of respite care and whether they were willing and able to do this.

Nottingham City Council (18 004 245) 2018

See also Wiltshire County Council (16015946) 2018

Caring for a child

carrying out any caring responsibilities the adult has for a child

- LAs 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 spouse's children.

Caring responsibilities for a child

A parent who was blind and who wanted support from a PA to enable her to take her children to school – so she could meet / socialise with other parents.

The council held this was not a social care need and that in any event her husband could take the children

Ombudsman

- The mother 'as responsible as her husband for looking after the children and s entitled to support to carry out her responsibilities as they have shared them between them'
- the council had failed to have regard to the whole family approach' advocated by the SG (para 6.65 – 6.73)

Complaint No. 17 012 768 (Staffordshire CC) 18 May 2018..

Carers Assessments (s10)

Duty to assess

- Unlike the pre-Care Act legislation:
 - No need for the care to be ‘regular & substantial’ requirement
 - No need for a ‘request’
 - There is now a ‘duty’ to meet eligible needs

Carers Assessments (s10)

Local Government Ombudsman

Hospital discharge

The duty is not only to involve carers in the hospital discharge but also to assess a main carer before the discharge occurs/

In the ombudsman's opinion it was also important for the carer to have been at the assessment.

Complaint no 16 003 456 against Surrey CC 8 Sept 2016

Carers Assessments (s10)

What is 'care'?

- both practical and emotional support (para 6.18)
- Section 1 physical /mental health /emotional well-being?

Previous guidance

- may relate to being 'anxious and stressed waiting for, or actively seeking to prevent, the next crisis'.

Carers Assessments (s10)

Basic principles

- whether the carer able / willing to provide and continue to provide the care;
- the impact on the carers 'well-being';
- the outcomes the carer wishes in day-to-day life;
- whether the carer works or wishes to (and / or) to participate in education, training or recreation.

A care plan will be unlawful if it 'assumes a level of input from a carer'

CP v. NE Lincolnshire C [2018]

Carers Assessments

Private / combined assessments

- 'only if the adult to whom the needs or carer's assessment relates agrees' – s12(5)
- if 'either of the individuals concerned does not agree to a combined assessment, then the assessments must be carried out separately' (para 6.72)

Advocacy / support

- LAs must involve 'any person whom the carer asks the authority to involve'. s10(7)

Eligibility criteria ~ carers (reg 3)

Eligibility criteria ~ carers (reg 3)

A carer's needs meet the eligibility criteria if

- The needs arise as a consequence of providing **necessary** care for an adult
- The effect of the carer's needs is that **any** of the circumstances specified below apply to the carer
- As a consequence there is, or is likely to be, a **significant** impact on the carer's well-being.

1. Needs arise as a consequence of caring for an adult;
2. One of the circumstances listed below exists;
3. A significant impact on the carer's well-being occurs

Outcomes

- (a) the carer's physical or mental health is, or is at risk of, deteriorating;
- (b) the carer is unable to achieve any of the following outcomes—
 - i. carrying out any caring responsibilities the carer has for a child;
 - ii. providing care to other persons for whom the carer provides care;
 - iii. maintaining a habitable home environment in the carers home (whether or not this is also the home of the adult needing care);
 - iv. managing and maintaining nutrition;
 - v. developing and maintaining family or other personal relationships;
 - vi. engaging in work, training, education or volunteering;
 - vii. making use of necessary facilities or services in the local community, including recreational facilities or services; and
 - viii. engaging in recreational activities.

Carers & Eligibility

The carer's physical or mental health is, or is at risk of, deteriorating

- 56% carers have a caring related health condition
- 43% of carers had sought medical treatment for depression, stress or anxiety since becoming a carer;
- 84% of carers reported that caring had had a negative impact on their health
- 23% increased risk of stroke for spousal carers.
- 50% affected by depression after taking on a caring role.

Guidance para 6.121

carrying out any caring responsibilities the carer has for a child

- any parenting or other caring responsibilities the carer has for a child in addition to their caring role for the adult. eg, the carer might be a grandparent with caring responsibilities for their grandchildren while the grandchildren's parents are at work..

- Divya example (p196 statutory guidance)
- Caring for father who has a DP and her 4 children:
- Divya received a carers' direct payment, which she uses for her children to attend summer play schemes so that she get some free time to meet with friends and socialise.

Guidance para 6.121

providing care to other persons for whom the carer provides care

- any additional caring responsibilities the carer may have for other adults. eg, a carer may also have caring responsibilities for a parent in addition to caring for the adult with care and support needs.

Guidance para 6.121

maintaining a habitable home environment

- whether the condition of the carer's home is safe and an appropriate environment to live in and whether it presents a significant risk to the carer's wellbeing. A habitable home should be safe and have essential amenities such as water, electricity and gas.
- 23% of parent carers were going without heating
 - 40% of carers in debt because of their caring roles (50% for parent carers)
 - 33% unable to afford their utility bills and 75% cut back on holidays, leisure activities, buying clothes and going out with friends and family.

Guidance para 6.121

managing and maintaining nutrition

- whether the carer has the time to do essential shopping and to prepare meals for themselves and their family.

- 14% carers do without food.
- 45% find it hard to maintain a balanced diet.

Guidance para 6.121

developing and maintaining family or other significant personal relationships

- whether the carer is in a position where their caring role prevents them from maintaining key relationships with family and friends or from developing new relationships where the carer does not already have other personal relationships.
- 39% carers find it hard to maintain social networks & have no-one to talk to about caring because 'people do not understand the impact that caring has on their lives'. 57% lost touch with friends or family.
 - Loneliness and social isolation increases the risk of premature death by 26% and 29% respectively.

Guidance para 6.121

engaging in work, training, education or volunteering

- 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.

- 54% carers have had to give up work to care,
- Half of carers reduced their hours; 32% had refused a promotion/ taken a less qualified job due to caring responsibilities;
- 2.3 million people had quit work to care;
- 3 million have reduced their working hours;

Guidance para 6.121

making use of necessary facilities or services in the local community

- whether the carer has an opportunity to make use of the local community's services and facilities and for example consider whether the carer has time to use recreational facilities such as gyms or swimming pools.
- 58% of carers reduced the amount of exercise they do since they started caring

Guidance para 6.121

engaging in recreational activities

- whether the carer has leisure time, which might for example be some free time to read or engage in a hobby.

- 73% of carers go without leisure and days out.

Carer eligible vs adult non-eligible

section 20

- (7) A LA may meet ... a carer's needs for support in a way which involves the provision of care and support to the adult needing care, even if the LA would not be required to meet the adult's needs
- (8) Where a LA is required by this section to meet some or all of a carer's needs for support but it does not prove feasible for it to do so by providing care and support to the adult needing care, it must, so far as it is feasible to do so, identify some other way in which to do so.

Carer eligible vs adult non-eligible

section 20

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Care & support plans

Respite and replacement care

- Where the carer is eligible for support but the adult being cared is not – and accordingly ‘does not have their own personal budget or care plan’ (para 11.42) – the carer could (eg) request a direct payment, and use that to commission their own replacement care from an agency (para 11.44).
- If such a type of replacement care is charged for... then it would be the adult needing care that would pay, not the carer, because they are the direct recipient of the service (para 11.45)

Carers services

- relaxation classes, training on stress management, gym or leisure centre membership, adult learning, development of new work skills or refreshing existing skills (so they might be able to stay in paid employment alongside caring or take up return to paid work), pursuit of hobbies such as the purchase of a garden shed, or purchase of laptop so they can stay in touch with family and friends.

para 11.41

Carer specific support

Carer's Travel expenses

In 2015 High Court proceedings the Secretary of State confirmed that carers services under the Care Act 2014 'could include help with fares when travelling to the recipient of the care'.

Hurley v. SS Work and Pensions
[2015] EWHC 3382 (Admin) para 25

Care & Support Plans

Key components of any care and support plan (para 10.36):

- the needs identified by the assessment;
- the extent to which the needs meet the eligibility criteria;
- how the LA is going to meet the needs;
- the desired outcomes of the adult 'in need';
- the outcomes the carer wishes to achieve (inc work, education and recreation);
- the personal budget ...;
- information / advice on what can be done to reduce the needs / prevent or delay development of needs ;
- where a direct payment ... , the needs to be met via the DP, the amount and frequency of the payments.

Care & Support Plans

A 2016 ombudsman report

Adult with significant LD lived with his parents. Care plan included 50 days of replacement care to enable his parents to have a break.

On review reduced to 14 days although his needs had not changed and the sustainability of his parents in maintaining their support was recorded as at risk.

Care & Support Plans

Ombudsman held
the council must explain the reasons for the
reduction:

it needs to show what circumstances have changed to warrant this reduction in respite provision'. In the ombudsman's opinion it was not acceptable for the council to state that it would offer emergency respite if the need arose:

Care & Support Plans

- The parent's need for 'weekends away and a little social life are not emergencies but part of a planned sustainable support regime'. The Council's assessment does not address these sustainability issues and the guidance says the impact on the carers' daily lives and non caring activities must be included.

Complaint no 15 013 201 against Sefton MBC 23.8.16

Care & Support Plans

Local Government Ombudsman

- Care and support plans should include effective contingency plans.
- The fact that these may be difficult to predetermine in certain cases does not mean that they are absolved from this responsibility

Complaint against Kent CC 20/10.2016

Care & support plans

Funding Panels

Care & support plans

Funding Panels

... . In some cases, panels may be an appropriate governance mechanism to sign-off large or unique personal budget allocations and/or plans. Where used, panels should be appropriately skilled and trained, and local authorities should refrain from creating or using panels that seek to amend planning decisions, micro-manage the planning process or are in place purely for financial reasons. ... (para 10.85)

Funding panels

A panel rejected an assessor's identification of the adult having eligible needs:

- I am not persuaded that this panel was purely looking at compliance with the Care Act and cost effectiveness. If this was its remit, it failed to do this adequately. It is possible Miss X's needs could be met in other ways but with proper care and support planning in consultation with Miss X. Not through a decision in direct contravention of the care manager's recommendations by a panel who was not involved in the assessment.

Complaint. 15 017 591 Brighton & Hove CC 30/8/16.

Funding panels

Reports from assessors that are required to go to a 'panel' must include a recommendation from the assessor as to her or his professional opinion as to what care is required.

Complaint 15 020 384 London Borough of Bromley 7/9/16

Care & support plans

Local authority financial difficulties

- A local authority's finances are relevant when it decides *how* to meet the eligible needs of an individual 'but not *whether* those needs are met'. (para 10.27)
- LAs 'should not set arbitrary upper limits on the costs [they are] willing to pay to meet needs through certain routes' (para 10.27)

Reassessments

Local Government Ombudsman (2016)

- Authorities must not assume a carer is willing or able to provide any care – including additional care arising from a reduction in the care package.
- It will be maladministration for a reduction to occur without assessing the carer and explicitly clarifying (and recording) whether she/he is 'able and willing' to provide the additional care.

Complaint London Borough of Bromley 7/9/16

- LA Local authority reduced adult in needs support without proper consideration of the impact on his carer.

Complaint Essex CC 30//11/16

Assessing young carers

Young carers

Children Act 1989 s17ZA

Duty to assess a young carer ‘on the appearance of need’

- A YC is “a person under 18 who provides or intends to provide care for another person” (but excluding paid / formal volunteers)
- Detailed assessment regulations;
- Young Carers’ (Needs Assessments) (England) Regulations 2015

R (E) v. Islington LBC (2017)

- Child had to translate into sign language for her deaf mother (& vice versa) and provide extra care for younger siblings;
- LA considered this 'highly inappropriate';
- LA accepted she had caring 'responsibilities beyond what is appropriate' but argued that these due to her mother's inadequate parenting;
- LA refused to undertake a YC assessment;

Held

- illogical - she was catering for needs arising out of her mother's deafness, even if mother's approach to parenting may have been a contributory factor.

YC Assessment regs

Duty to consider

- the YC's age, understanding and family circumstances;
- the wishes, feelings and preferences of the young carer;
- differences of opinion between YC, YC's parents and the person cared for, concerning the care provided; and
- the outcomes the YC seeks from the assessment.
- young carer's wishes to participate in education, training, recreation, work.

YC Assessment regs

Duty to consider

- amount, nature and type of care provided;
- extent to which this care is relied upon by the family
- impact on YC's well-being, education & development;
- extent to which the care is inappropriate
- if needs can be prevented by providing services to—
- the person cared for, or
- another member of the young carer's family;
- what YC's support needs would be if relieved of the tasks;
- other assessments of YC / person cared for;
- if YC is a child in need;
- actions to be taken as a result of the assessment;
- the arrangements for a future review.

Assessing parent carers

(ie a parent caring for a disabled child)

Parent carers

Children Act 1989 s17ZD

Duty to assess a parent carer ‘on the appearance of need’

- A PC is an adult ‘who provides or intends to provide care for a disabled child for whom the adult has parental responsibility’
- The assessment must have regard to the well-being of the parent carer;
- “well-being” has same meaning as in Care Act 2014.

Well-being

relates to:

- (a) personal dignity
- (b) physical /MH /emotional;
- (c) protect abuse /neglect;
- (d) control day-to-day life;
- (e) work, education, training;
- (f) social & economic;
- (g) personal relationships;
- (h) suitable accommodation;
- (i) contribution to society.

regard to—

- (a) individual is best placed;
- (b) views, wishes and feelings;
- (c) all the circumstances;
- (d) participate in decisions
- (e) a balance between individual's and carers;
- (f) Protect abuse/ neglect;
- (g) minimum restrictions.

A 2016 ombudsman's report

- Single mother with two children: one with significant disabilities & in need constant supervision.
- Council advised her that it expected parents to organise their work responsibilities around the needs of their children: that it was not its responsibility of to provide direct payments solely to enable parents to work
- But she could use the respite breaks she received to enable her to work

A 2016 ombudsman's report

Maladministration

- Council has failed to understand the law.
- The child's assessment and carer's assessment should 'feed into each other'.
- Council knew son needed constant supervision.
- Council also knew mother in full time work and the nature of her job meant she could not pursue flexible working.
- These were key factors but neither the son's assessment nor the carer's assessment properly considered those issues

A 2016 ombudsman's report

- Government guidance clearly states authorities should not assume a carer is happy to continue in their caring role.
- Councils are required to consider whether a carer wishes to work.
- Nothing in the assessments to suggest the Council properly considered the impact on ... if she did not receive support during school holidays.

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Kent County Council No. 14 015 230 7 June 2016.

Non-parent carers

- People who provide or intend to provide, regular and substantial care for a disabled child (but don't have 'parental responsibility' for that child)
- ie unmarried non-parent partners, adult siblings etc etc
- Have a right to an assessment under:

Carers (Recognition and Services) Act 1995 s1.

Covid-19

Covid-19

Coronavirus Act 2020 s15 & Sch 12

An abundance of guidance

- Department of Health and Social Care *The Guidance Responding to COVID-19: the ethical framework for adult social care* (19 March 2020);
- Department of Health and Social Care *Visiting arrangements in care homes for the period of national restrictions* (November 2020).

Covid-19 ~ ethical framework

Reasonableness

- ensuring that decisions are rational, fair, practical ...
ensure the decision made is practical with a reasonable chance of working
- consider alternative options and ways of thinking, being conscious of diverse views from cultures and communities

Inclusiveness

- involve people in aspects of planning that affect them, their care and treatment, and their communities
- involve families and carers in aspects of planning that affect them and the individual who they care for

Covid-19 ~ ethical framework

Flexibility

- being responsive, able, and willing to adapt when faced with changed or new circumstances.

Local authorities should be prepared to':

- respond and adapt to changes as and when they occur, for example in the event of new information arising or changed levels of demand
- ensure that plans and policy have room for flexibility and innovation where necessary

Covid-19 ~ ethical framework

Flexibility

- provide people with as much opportunity as possible to challenge decisions that affect them in the time that is available
- ensure that the health and care workforce is supported to work collaboratively across disciplines and organisations, as agile and resilient as possible
- review organisational practices, standard approaches and contractual arrangements that may obstruct these ambitions

Covid-19

Flexibility

Being flexible when care and support is provided;

Being imaginative in the use of direct payments (ie carrying over funds from week to week / paying family members etc)

Flexibility and visiting restrictions – see eg :

- *BP v Surrey County Council & RP* [2020] EWCOP 1
- *Hertfordshire Partnership University NHS Foundation Trust* (2020)

Both concerned outright bans on contact with disabled person – both concerned ‘proportionality’

Covid-19

Reduction in care packages due to Covid

If care and support is reduced due to delivery difficulties – ie social distancing etc – then authorities must not only demonstrate flexibility, they must also reinstate the support as soon as circumstances permit.

Some authorities are suggesting that they will not restore support without a reassessment.

Legally this must be wrong.

Covid-19

Reduction in care packages due to Covid

There are two key legal presumptions that must apply in such cases:

1. that the need continues – until the authority has evidence that it does not; and
2. that the need must be met if at all possible – so if (for example) another way of delivering the support is found or if the rules on social distancing are relaxed – then the support must be reinstated in full and maintained until such time as the authority has cogent evidence that the need has diminished.

Carer / disabled person conflict

The 'cared for' refusing services

A disabled person may refuse services which would be of benefit to the carer – for instance respite care.

Frequently these difficult situations can only be resolved by skilled and sustained social work. The courts have repeatedly held that social services departments cannot take a simple refusal of help at face value. They should continue to try and engage with the person.

eg *R v Kensington & Chelsea RLBC ex p Kujtim* (1999) &
R (Patrick) v. Newham LBC (2000) 4 CCLR 48.

The 'cared for' refusing services

- At law, where an authority has identified a carer as having eligible needs (but it is not able to meet these needs by providing care and support to the adult needing care) then it must 'so far as it is feasible to do so, identify some other way in which to do so'.
- this is stated explicitly in the Care Act 2014, section 20(8) and must be implicit within the SSWB Act 2014.
-

The 'cared for' refusing services

- English guidance on 'whole family approaches' provides practical advice concerning an elderly person with dementia who was adamant that she only wanted her daughter to care for her – and who was herself 'exhausted and at breaking point' – to which an imaginative approach was taken to work around this issue.

Department of Health The Care Act and Whole-Family Approaches (2015) pp. 8-9

Information sharing

On occasions carers are refused access to crucial information concerning a 'cared for' person who lacks sufficient mental capacity to agree to the sharing of the information.

GMC guidance (2017) advises however:

it is reasonable to assume that patients would want those closest to them to be kept informed of their general condition and prognosis

GMC Confidentiality: good practice in handling patient information (2017) para 38

Questions and discussion

Question

What rights do carers have regarding flexible working and time off for the caring role?

- This question is considered in chapter 15 of the Carers Rights Guide (2018) accessible at <http://www.lukeclements.co.uk/publications/>.
- There are rights to 'Emergency leave' and to apply for 'Flexible working arrangements'

What rights do carers have to stay in a house after the cared for is deceased or moved to residential care and they are not a spouse?

Capital disregards ~ property

Main residence value ignored unless the person is in a care home; then it is ignored:

- if the stay is temporary or
- The first 12 weeks of a permanent stay;

If permanent, disregarded if occupied by:

- the resident's partner or former partner; or
- a relative who:
 - is aged 60 or over, or
 - is aged under 18 and is a child whom the resident is liable to maintain, or
 - is incapacitated.

Question

What right do carers have to be involved in the discharge process and care planning of their cared for when they are in hospital?

- This question is considered in chapter 8 of the Carers Rights Guide (2018) accessible at <http://www.lukeclements.co.uk/publications/>.
- But recent guidance suggests carers have no right except to be 'informed' of the discharge.
- DoH *Hospital discharge service: policy and operating model* (August 2020)

Question

Who should sign a contract with a residential home when the care is part self-funded and part social care funded ?

- In almost all cases- the local authority should sign the contract

What rights do carers have in the choice of care home for their loved one when they are not self-funding?

- They should be fully involved in the decision and local authorities should address all concerns and provide 'evidenced based reasons' if they disagree.

Question

What help are carers entitled to from social services when completing a financial assessment for their cared for and what is taken into account?

- I am not aware of any guidance on this ie the support carers should be given to complete financial assessment forms. The rules on charging are complex and beyond the scope of this lecture Age UK among other groups have good guidance leaflets concerning the charging rules.

Age UK guide 'Paying for homecare'

Question

2014 Care Act vs NHS CHC Framework.

- NHS has the same duty of care / duty to promote the best interests of disabled people as social services.
- If a person is eligible for CHC funding social services can't provide the care and so this is a choice you do not have.
- You have created a discretionary trust and that is probably the best you can do to safeguard his future.
- Under NHS funding rules you cannot in general make 'top up' payments. This issue is complex and is covered in my book 'Community Care and the Law' (Legal Action Group 2019) paragraph 13.170



Question

The duty on the LA to provide a service user or their representative with a breakdown of how their financial contribution to their service

- My understanding is that local authorities must provide details of how charges are calculated in every case and not simply on request.

Question

Query re the Minimum Income Guarantee (MIG) used to calculate Social Care Charges.

- The charging rules for adult social care are a disgrace.
- You are correct that the freezing of MIG has effectively meant that disabled people have had no income increase for many years. I am not sure if this can be challenged but it does strike me that it is a form of discrimination against the 'more disabled'.
- I have uploaded a number of posts on my website concerning this injustice (at www.lukeclements.co.uk/whats-new/).



Question

I have full power of attorney and my relative whom I haven't seen for several months is in a care home. I want to remove them from the care home and get them to live with me. Is there any law preventing me from doing this?

- Provided the disabled person is not subject to a legal order depriving them of their liberty and providing that you are satisfied that moving them would be in their best interests I can't think of a specific law that would – prevent you from doing this.
- Your LPA will not empower you to remove them if it is only a property and affairs LPA – and you would always have to discuss with key parties what they think is in the person's best interests (Mental Capacity Act 2005, s4).

Question

During COVID my son hasn't been able to attend his normal service. Can I use his DP to buy another service/activity to keep him occupied instead of continuing to pay for a day centre that isn't open?

- Direct payments must be used to purchase services that meet your son's 'assessed needs'. The Covid guidance stresses the importance of LAs being flexible. So if the assessed needs were – in effect – for him to have community based activities, then it may be unreasonable for a LA to refuse be flexible if a reasonable alternative arrangement is proposed.

Responding to COVID-19: the ethical framework for adult social care (2020)

Question

My daughter's social worker is insisting that she cannot change what was in her support plan e.g. use her DP/Personal Budget to buy gym equipment and arts and crafts stuff during covid instead of paying to go to the leisure centre or out for coffee. Are they allowed to insist?

- See note above

Question

I love my husband & I care I care for him 24/7: I can no longer cope physically or mentally. I intend on going to social services and giving them the keys to my home and telling them he is now their responsibility as I am leaving and not coming back. Will there be any come back (legally) on me, and what is the outcome for my husband?"

- There is no duty on adults to care for other adults / spouses. The Care Act 2014 makes it clear that LAs cannot assume that adults are willing or able to provide or to continue to provide care.

Question

- Providing you do not put him in significant danger ie you give the LA adequate notice – I can't see that you are breaking any law.
- Obviously, there is a duty on LAs to provide adequate support for your husband and if possible, to enable you to sustain your relationship.
- If you do leave and the LA does step in and provide care – then it will assess his needs and be under a duty to meet those needs.

Question

As a carer, do I need to prove that I have needs and due to changes in my circumstances can I make Social Services provide the same level of care that I have been giving?

- As noted above LAs must not assume that carers are willing or able to provide or continue to provide care. If you are no longer able to provide care for a disabled person, social services will have to assess what support they need and to provide this support .
- It may not be at exactly the same level that you are providing - but if it decides to provide less, you and the disabled person can challenge that decision through the complaints' process.

Question

I live in a privately rented property, what rights do I have to adapt the property, so it meets the needs of the cared for?

- If you wish to adapt a property that belongs to another person, then you will need to obtain their consent.
- There is a duty on property owners not to discriminate against disabled people and so if the owner wants to refuse they will have to demonstrate that they have considered their obligations under the Equality Act 2010 and give reasons why it is not reasonable for the adaptations to take place.

Question

I am planning to quit my job to look after my loved one, but I have mortgage and other financial commitments, what support is there for me?

- I am not a social security expert and so I cannot answer this question. In general, UK law makes little provision for carers who are experiencing hardship of this kind – but you will need to obtain legal advice from a Citizens Advice Bureau or a similar organisation with specialist social security knowledge.