

# The Care Act, 2014 and its implications for practice

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March 2016

# Community Care Law 1948-2014



- 1948 National Assistance Act
- 1968 Health Services and Public Health Act
- 1970 Chronically Sick and Disabled Person's Act
- 1983 Health & Social Services & Social Security Adjudications Act
- 1984 Disabled Person's Act

- 1990 NHS and Community Care Act
- 1995 Carers (Services and Recognition) Act
- 1996 Community Care (Direct Payments) Act
- 2000 Carers and Disabled Children Act
- 2001 Health and Social Care Act

# Terminology of the Care Act

Who might receive care and support?

Previous community care acts

Disabled People

Elderly People

Ill people

No more....

## **IMPLICATION –**

The Care Act refers to “**Adults**” and “**Carers**” not to specific eligible groups

A “window” for homeless people? (Cornes et al, 2015)

**Generally speaking** – familiarity with “new” jargon will be important for those in the homeless sector

# Section 1 - WELLBEING

Dignity

Physical, Mental Health and Emotional Wellbeing

Protection from abuse and neglect

Control over day to day life

Participating in work, education, training, recreation

Social and economic wellbeing

Domestic, family and personal relationships

Suitability of living accommodation

Contribution to society

**IMPLICATIONS** – wellbeing reframes the LA's approach to ALL clients

Hard to imagine how homelessness would not affect wellbeing!!  
(Cornes et al, 2015)

# SECTION 4 – INFORMATION

## S4 – Information

- Duty on LA to provide adults / carers with information about care and support
  - How the care system operates;
  - Care and support choices they have (including the choice of providers);
  - How to access this support
  - How to raise safeguarding concerns
  - how to access independent financial advice (significant re: self-funders, Dilnot Report)

### **IMPLICATION –**

A finding of ineligibility should STILL lead to the provision of information.

It can also lead to consideration of the POWER to provide services to non-eligible needs

# SECTIONS 3, 6, 7

## INTEGRATION & COOPERATION

- Integration with NHS (S3)
  - Better Care Fund
  - Aimed at releasing acute hospital pressures
  - Pooled budgets, shared resources
  - Will probably lead to jointly funded integrated posts
- Cooperation (S6, 7)
  - Based on s27 Children Act, 1987
  - Local Authorities can request assistance from health / housing
  - This must be provided

### **IMPLICATION –**

Better intra-LA working arrangements between housing and SS  
Implications for hospital discharge homeless teams  
Possible use of the Better Care Fund for homeless projects???

# SECTION 10 - CARERS

## S10 - Carers Assessment Duties

- Big changes – no longer dependent on request or level of care provided
- New trigger – the appearance of need
- Extends to carers for children transitioning
- Carers for adults who are not eligible may still be eligible (s20)
- Assessment must ascertain
  - 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.

### **IMPLICATION –**

New and extended duties towards carers as a route to prevent homelessness??

# SECTION 42 - Safeguarding

- S42 – Duty to Make Enquiries
- Statutory Guidance replaces 'No Secrets'
- Proportionality a key principle
- Person-centred

Categories of Abuse			
Physical	Sexual	Neglect (Acts of Omission)	Emotional (Psychological)
Financial	Institutional (Organisational)	Discriminatory	
Modern Slavery	Domestic Abuse	Self-Neglect	



# SECTION 67 – Independent Advocacy

- Who?

Adults in need  
of Care &  
Support

Carers

Children  
approaching  
transition

Parents of  
Children appr.  
Transition

- When?

Assessment

Care and  
Support  
Planning

Review

Safeguarding

- Consider...

Substantial Difficulty  
Engaging

Anyone appropriate

## IMPLICATIONS –

New rights to advocacy for the purposes of community care  
Please be aware of this right – reported under-usage AND First Care  
Act Judgment – more of this later....

# SECTION 9 – Assessment,

# SECTION 8 – Care and Support

- S9 – Duty to assess much the same as S47 NHSCCA
  - Appearance of need
- S8 – Talks about provision not services
  - Illustrative list, not prescriptive (as with repealed Community Care Acts)
    - a) accommodation in a care home or in premises of some other type;
    - b) care and support at home or in the community;
    - c) counselling, advocacy and other types of social work;
    - d) goods and facilities;
    - e) information and advice.
  - But not... ‘adaptations’ ‘travel’; and ‘holidays’

# S13 – NATIONAL ELIGIBILITY TEST

**Due to Physical or Mental  
Impairment or Illness**

**Two or More “Outcomes” met**

**Significant Impact on Wellbeing**

# SECTION 13 – Eligibility Outcomes

## Outcomes (2 or more)

- 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
- j) Carrying out any caring responsibilities the adult has for a child

# SECTION 13 – Significant Impact on Wellbeing???

Local authorities should determine whether:

- the adult's needs impact on an area of wellbeing in a significant way; or,
- the cumulative effect of the impact on a number of the areas of wellbeing

To do this, local authorities should consider how the adult's needs impact on the following nine areas of wellbeing in particular

- The impact of needs may be different for different individuals

## **IMPLICATIONS –**

Removal of “eligible groups”

Homelessness itself is not a trigger – it is a health condition

Alongside austerity, will there be a difference? (Cornes et al, 2015)

# S39-41 Ordinary Residence

- Statutory Guidance states decisions should be person-centred
- Lays out a dispute resolution process
- Portability of care packages
- Continuity of responsibility in Supported Living premises
- Cross-border placements
- Business failure
- No settled residence
- Shah Test

# No Recourse

- The Care Act repeals Section 21 National Assistance Act, 1948

Section 39 – Territorial  
Responsibility

Section 9 – Duty to assess  
Section 8 – forms of  
provision of Care &  
Support

Sections 18 and 19 –  
Duties / Powers to meet  
need

- This forms the backdrop to the determination of
  - Schedule 3 NIA Act 2002 exclusions
  - exceptions determined by the HR Act 1998 assessment

# Care Act, 2014 miscellaneous

S2 – Duty to prevent, reduce, delay

S5 – Duty to promote high quality providers

S14 – Charging / cap (post Dilnot) but delayed

S59-62 and 67 – Transition, Parent Carers and Young Carers

Things that remain:

- Hospital Discharge (with new names)
- Care and Support Plans (S25-26)
- Direct Payments (S31-33) (extended to res care)



# SG v Haringey – First Care Act caselaw (2015)

- Caselaw slow to emerge
- Means that LAs are interpreting the law and statutory guidance themselves
- SG – Asylum seeker
- Haringey criticised for failing to consider independent advocacy and accommodation-related support

## **IMPLICATIONS –**

Accommodation related support!

Care and Support rendered useless without a roof to accommodate this care and support

Also a useful reminder re: independent advocacy

# Closing thoughts....

- Familiarity with the jargon of the Care Act, 2014
- Much of the detail depends on caselaw – but helpfully the first Care Act Judgment includes reference to accommodation-related support
- However, whether this amounts to a ‘new deal’ for homeless people per se is up for discussion... needs still need to arise from a physical or mental health issue (Cornes et al, 2015)
- Housing still comes before Community Care (Section 23) – but adult social care may end up using its resources in immediate situations.... possibly (Schwer, 2015)
- Austerity context however may hamper potential (Slasberg, 2013)

# References and further reading

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