

Social Services & Well-being (Wales) Act 2014

Luke Clements
www.lukeclements.com



Social Services & Well-being (Wales) Act 2014

An Act of the National Assembly for Wales to reform social services law; to make provision about improving the well-being outcomes for people who need care and support and **carers** who need support; to make provision about co-operation and partnership by public authorities with a view to improving the well-being of people; to make provision about complaints relating to social care and palliative care; and for connected purposes.

Luke Clements Training

Definitions (sections 2 - 4)

People who need care and support

- ie disabled / older adults etc

Eligibility criteria require that the needs arise:

- from physical or mental ill-health, age, disability, dependence on alcohol or drugs,;

Disabled child

- same meaning as in Equality Act 2010 s6

Carer

- a person who provides or intends to provide care for an adult or disabled child (but is not paid to do so)

Well-being ~ section 2

- physical and mental health and emotional well-being;
 - protection from abuse and neglect;
 - education, training or recreation;
 - domestic, family and personal relationships;
 - contribution made to society;
 - securing rights and entitlements;
 - social and economic well-being;
 - suitability of living accommodation.
- for adults
- control over day to day life;
 - participation in work

Well-being ~ section 6

LA must have regard to—

- the individual's views, wishes and feelings,
 - promoting and respecting the dignity of the individual,
 - the characteristics, culture and beliefs of the individual (including, for example, language), and
 - the importance of support to enable the individual to participate in decisions....
- for adults
- the presumption that they are best placed to judge their well-being, and
 - the importance of promoting independence if possible

Independent living

Section 6(3)(b)

- 'the importance of promoting the adult's independence where possible'.

Part 2 Code

- the well-being duty 'includes key aspects of independent living as expressed in the UN Convention on the Rights of Disabled People [CRDP], in particular, Article 19.'

Independent living

Quality Standard 1 of the Code of practice in relation to measuring social services performance 'in the exercise of their social services functions local authorities must

- have regard to a person's individual circumstances and the UN convention on the rights of children and the UN principles for older people and the UN convention on the rights of disabled people (p9)

Preventative services ~ s15

Duty to secure preventative services – ie to:

- Prevent / delay the development of people's needs for care and support;
- minimise the effect on disabled people of their disabilities;
- promote the upbringing of children by their families

section 19 / 21

Assessment of adults and children

Specific duty

- 'on the appearance of need'
- is 'carer blind'

Lake Clements Training

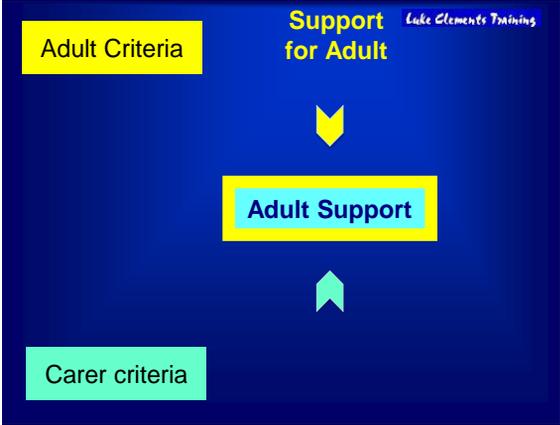
section 24

Carers' assessments

No longer a requirement to:

- Provide 'regular & substantial' care;
- To 'request' the assessment;

Now a **'duty'** to meet carer's 'Eligible Needs'



Lake Clements Training

Eligibility Regulations 2015 ~ Stage 1

Adults:

- The need is due to physical or mental ill-health, age, disability, dependence on alcohol or drugs ...;

Carers:

- The need arises as a result of providing care for either an adult in need or a disabled child

Lake Clements Training

Eligibility Regulations 2015 ~ Stage 2

The need relates to one or more of these outcomes:

- (a) ability to carry out basic self-care or domestic routines;
- (b) protection from abuse or neglect;
- (c) involvement in work, education, learning, leisure ...;
- (d) maintaining family / significant personal relationships;
- (e) development & maintenance of social relationships and involvement in the community;

in the case of an adult

- fulfilment of caring responsibilities for a child;

in the case of a child

- achieving developmental goals

Lake Clements Training

Eligibility Regulations 2015 ~ Stage 2

basic self-care ~ tasks part of normal daily life including—

- (i) eating and drinking;
- (ii) maintaining personal hygiene;
- (iii) getting up and getting dressed;
- (iv) moving around the home;
- (v) preparing meals;
- (vi) keeping the home clean, safe and hygienic

Additional ground for carers

- (vii) fulfilment of caring responsibilities for a child;

Lake Clements Training

Eligibility Regulations 2015 ~ Stage 3

The adult is not able to meet that need, either—

- (i) alone,
- (ii) with the support of others willing to provide;
- (iii) with the assistance of services in the community to which the adult has access.

Eligibility Regulations 2015 ~ Stage 3

The 'can and can only test'

Suggestion

Carers state clearly, that they are not able (and therefore not willing) to provide care unless the LA first determines that the individual in need is eligible.

Then, and only then, will they be able (and therefore willing) to discuss the nature and extent of the care (if any) they might be willing to provide.

Eligibility Regs 2015 ~ Stage 4 [children]

the need is one that neither the child, the child's parents nor other persons in a parental role are able to meet, either

- (i) alone or together,
- (ii) with the care and support of others who are willing to provide that care and support, or
- (iii) with the assistance of services in the community to which the child, the parents or other persons in a parental role have access;

Reg 4(1)(c)

Eligibility Summary

Adults / carers

1. Need due to impairment or caring
2. Means you can't do one key activity
3. This need is not able to be met except with social services help

Assessing need

- 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.

Section 34

Range of care and support for individuals in need

- a) accommodation in a care home, children's home or in premises of some other type;
- b) care and support at home or in the community;
- c) services, goods and facilities;
- d) information and advice.
- e) counselling and advocacy;
- f) social work;
- g) payments (including direct payments);
- h) aids and adaptations;
- i) occupational therapy.

Care & Support Planning

What the assessed need are

How the need is to be met

- the level & frequency of the help that is to be provided;
- who is going to provide it;
- which agency is responsible for what service;
- what the objectives of are providing help(outcomes);
- when is the care being provided (times / days / dates);
- what the carers are willing to do;
- who is the coordinator and their contact number;
- who to contact in emergencies;
- what the contingency plan is if things go wrong;
- who is monitoring the plan;
- When the review is to happen.

Copies of assessments and care plans

The individual / their authorised representative and /or parents must be given a copy of:

- their assessment
Assessment Regs 2015 reg 6
- all elements of the assessment and eligibility as well as their care and support plan
Part 4 Code paras 24 and 95.

Duty to provide care & support adults

Section 35 ~ support for adults in need

Duty to provide applies where:

- Individual is ordinarily resident in LA area; and
- Individual has eligible needs: and
 - Individual's finances below maximum allowance; or
 - Individual's finances above maximum allowance and they ask the LA to provide

Duty to provide care & support for children

Section 37 ~ 39

Complexities concerning duties to meet needs of children;

Replication of s17 Children Act 1989

Specific duty

Not apply to looked after children (part 6)

Duty to provide care & support for carers

Section 40 - 45

Complexities concerning duties to meet needs of carers:

- of adults
- of disabled children;
- who are Young Carers

NHS Continuing Care

Section 47

- Major problems in Wales – severe problems with LHB practice
- Section 47 needs substantial re-wording (addressed in English Care Act, section 22)
- Absent *Coughlan* criteria:
- Quality test – of a 'nature' one would expect social services to provide:
- Prohibition on providing care that the NHS has a 'power or duty' to provide;

Direct Payments

Sections 50 - 53

Little change

- The Care and Support (Direct Payments) (Wales) Regulations 2015 contain the detail
- DPs can now be used to purchase care and support ... from any person (including, among others, the authority which made the payment).
- purchase residential care (unlike in England)

section 56

Portability

- Language (sending / receiving)
- If 1st authority notifies 2nd authority that person is moving;
- When person has moved:
- If 2nd authority not assessed / or put in place care plan,
- Then 2nd authority must meet the same needs as 1st authority

sections 59 - 73

Charging

- Charges
 - Detail in regulations
 - Care and Support (Financial Assessment) (Wales) Regulations 2015
 - possibly lead to more carers being charged?
 - Current Welsh maximum has created significant distortions

Advocacy

LAs must ensure

- 'services which provide assistance (by way of representation or otherwise) to persons for purposes relating to their care and support' (section 181(2)).

Right only arises if no 'appropriate individual'

Advocacy ss 181 - 183

Part 10 Code of Practice (Advocacy)

- LAs must arrange for the provision of an independent professional advocate when a person can only overcome the barrier(s) to participate fully in the assessment, care and support planning, review and safeguarding processes with assistance from an appropriate individual, but there is no appropriate individual available; (para 47)
- Advocacy supports and enables people who have difficulty representing their interests, to exercise their rights, express their views, explore and make informed choices. (para 27)

Appropriate individual (Code 10 13.63)

Appropriate individuals are expected to support, represent and to facilitate the individual's involvement in securing their well-being outcomes. Whilst often this will be a family member, friend or someone in the wider support network it is likely that some people may not find it that easy to fulfil this role.

Appropriate individual (Code 10 13.63)

For instance, a family member who lives at a distance and who only has occasional contact with the person; a spouse who also finds it difficult to understand the local authority processes; a friend who expresses strong opinions of their own prior to finding out those of the individual concerned. It is not sufficient to know the person well.

The role of the appropriate individual is to support the individual's full engagement and participation in determining their well-being outcomes.

Duty to consider advocacy

Duty to consider the need for an advocate arises in a wide range of situations including:

- the provision of information and preventative services;
- assessments of need, care planning, meeting needs,
- direct payments,
- portability of support,
- reviews,
- safeguarding of property

Code 10 13.50

Looked After Children (ss74 – 125)

Part 6

Largely re-enacts the provisions in Part 3 of the Children Act 1989 relating to 'looked after and accommodated children – ie

- independent reviewing officers,
- Children Leaving Care provisions,
- Secure accommodation etc.

Part 6 ~ Looked After Children

Children's Commissioner for Wales (2014)

The Act does not recognise:
the distinct circumstances of children and young people.

The Commissioner failed to understand:
how the replacement or restatement of parts of existing legislation relating to children will give greater effect to the best interests of the child

Ordinary residence (ss39 – 41)

Basic principle remains – OR is your ‘base’
Two ‘deeming rules’

1. If in an NHS facility, OR is where person was based immediately before the NHS accommodation
2. If a LA arranges and funds care in a care home then the person is deemed to be OR in the LA’s area even if the care home is in another area

s117 Mental Health Act 1983

Patients detained under:

- s3 MHA 1983
 - (or a criminal provisions)
- when discharged
- free after care services under s117 MHA 1983.
 - Joint NHS / social services duty

S117 Mental Health Act 1983

- **R (M) v Hammersmith & Fulham LBC (2010)**
- Accommodated in a care home [under SS&W-bA 2014] by Hammersmith in Hammersmith: therefore OR in..... ?
- Admitted to hospital after an accident: and on discharge enters Sutton care home funded by Hammersmith: therefore OR in..... ?
- Admitted to a psychiatric unit under s2 MHA 1983 and on discharge returns to same care home: therefore OR in..... ?
- Admitted again but this time under s3 and on discharge returns to same care home: therefore OR in..... ?

S117 & Ordinary Residence

Primary social care obligation rests with LA in which the person was OR immediately before being detained.

- if OR in LA (A) before detention and moves on discharge to LA (B) and moves again to LA (C)
- LA (A) will remain responsible
- Unless patient, having become OR in (B) or (C), is subsequently detained in hospital for treatment again

Safeguarding (part 7)

Safeguarding a theme that runs through the Act:

- protection from abuse and neglect' ~ a key ingredient of 'well-being' (s2);
- services are to be developed to prevent people from suffering abuse or neglect (s15(2));
- abuse or neglect can trigger 'eligibility' (s 32);
- support services can be provided when deemed necessary to protect people from abuse or neglect (s35(3) & s37(3)).

Safeguarding ~ adults

Adult at risk

- experiencing (or is at risk of) abuse or neglect, and
- has needs for care and support and
- as a result of those needs is unable to protect himself or herself against the abuse or neglect or the risk of it

s126(1)

Luke Clements Training

Safeguarding ~ children

Child at risk

- experiencing (or is at risk of) abuse, neglect or other kinds of harm,

and

- has needs for care and support (whether or not the authority is meeting any of those needs)

s130(4)

Luke Clements Training

Safeguarding

Abuse

physical, sexual, psychological, emotional or financial and which may occur in any setting.

- financial abuse includes (a) having money or other property stolen; (b) being defrauded;(c) being put under pressure in relation to money or other property; (d) having money or other property misused.

Neglect

a failure to meet a person's basic physical, emotional, social or psychological needs, which is likely to result in an impairment of the person's well-being.

Q. Does this include 'self-neglect'?

s197

Luke Clements Training

Safeguarding

National Independent Safeguarding Boards (s 132)

- Regs flesh out objectives ~ to 'protect and to prevent'.

Puts on a statutory footing '*In Safe Hands*'

Statutory guidance to part 7 (Safeguarding)

SS&W-b Act 2014

Adult Protection and Support Orders (Authorised Officer) (Wales) Regulations 2015

Safeguarding

Adult protection and support orders (s127).

- an 'authorised officer' of a LA may obtain an order from the magistrates court
- entitles them to speak in private with a person suspected of being at risk
- in order to ascertain whether she / he is making decisions freely and whether he / she is at risk.

Prisons

Section 185 - 188

Adults ordinarily resident within the area of the prison (s185)

Young people in youth custody / prison generally ordinarily resident in the local authority they were based in (or receiving support from) immediately before detention (s186)

Prisons

LA's must support an adult with care and support needs in [prison] 'just as they would for someone in the community'.

The local authority must design its care and support procedures to be able to meet the care and support needs of those [in prison]. The delivery of care and support arrangements operating in the community setting may need to be adjusted to meet the needs of the [prison] population

Part 11 Code page 7

Prisons

Advocacy must be provided for those [in prisons] in the same way as for those living in the community. Advocacy can be provided by family, friends or someone's wider support network. There will be occasions where this primary advocacy source is unavailable/ cannot gain ready access and in these instances,

LAs must ensure that an independent advocate is provided, at no cost to the individual, in order that they can be fully engaged and able to participate in

- the process

Part 11 Code page 16

Human Rights Protection

- Where care or support is arranged by a local authority, or paid for (directly or indirectly, and in whole or in part) by the authority and that care is provided by a registered care provider to an adult or a carer either in their own home or in care home
- Then the provider is deemed to be a public authority for the purposes of the Human Rights Act 1998.

Care Act 2014 section 73(1)(b)
