

Carers & their Rights

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7th edition 2016

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Care Act 2014

AN
ACT
TO

Make provision to reform the law relating to care and support for **adults** and the law relating to support for **carers**

The importance of evidence


 **Evidence**

Well-being – presumption that that the adult is best placed to judge their well-being (s6(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

 **Statutory Guidance**

Original Statutory Guidance (October 2014)


Revised Statutory Guidance (Feb 2018)

Status of Guidance

- LAs must follow guidance unless they can demonstrate sound legal reasons for not doing so'. (s78 Care 2014)

Annexes

- Annex B, C, D, E Charging
- Annex G: Hospital Discharge

 **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.



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.



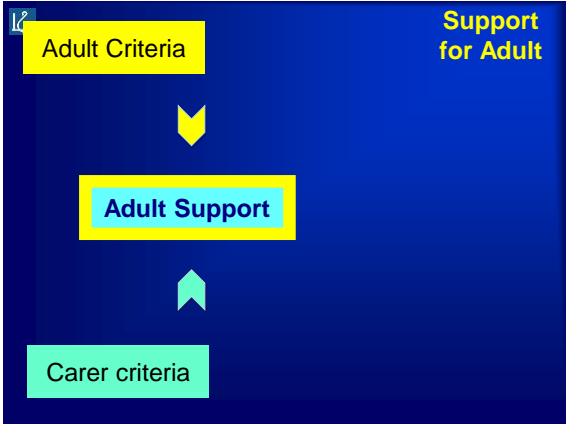
Assessment of adults in need

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

managing and maintaining nutrition.

- whether the adult has access to food and drink to maintain nutrition, and that the adult is able to prepare and consume the food and drink.




Nutrition ~ eating / preparing

A blind person.

She said she needed help to (among other things) check the contents of her fridge; read cooking instructions; and have an escort to help her on occasional shop trips.

In the council's opinion although the need relates to eating / preparing meals this could be addressed by use of long-life foods, her freezer, and ready meals.

↑
Is this sufficient to stop the impact on her well-being being significant?


 **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.

 **Nutrition**

Ombudsman

Maladministration for a LA to fail to recognise that 'fresh food is essential to meet nutritional needs' and that 'consumption of fresh food once it has started to perish carries a significant health risk'

Complaint ~ Hammersmith & Fulham 21 July 2016.

 **Guidance para 6.106**

being appropriately clothed.

- LAs should consider the adult's ability to dress themselves and to be appropriately dressed, for instance in relation to the weather to maintain their health.

Getting dressed

A blind person.

She said she needed help to (among other things) sort clothes, so she did not wear stained or inappropriate clothing

In the council's opinion although the need related to dressing this was not a dressing outcome that was sufficiently significant for it to be eligible.

Is this sufficient to stop the impact on her well-being being significant?

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.

Clothing

Ombudsman


Maladministration for a LA to fail to recognise the importance to an adult's personal dignity of wearing clean, presentable and appropriate clothes (a complaint concerning a visually impaired adult who needed support to sort her clothes so that she did not wear stained or inappropriate clothing)

Complaint ~ Hammersmith & Fulham 21 July 2016.

 **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.

 **maintaining a habitable home environment.**


Adult with Multiple Sclerosis along with other health conditions. He has mobility difficulties and is an essential wheelchair user. He uses a walking stick to mobilise inside his home.

His assessment recorded 'needs' domestic assistance. Social services advise that 'we no longer fund domestic work generally' and that he was not eligible because he could afford a cleaner: that the ... Act was "about what people can do for themselves".

 **maintaining a habitable home environment.**

2016 ombudsman report (Dorset CC)


- In finding maladministration the LGO held that the adult had an eligible need. Therefore he was entitled to receive such a service.
- The Care Act says "The local authority must also establish whether the individual wants to have their eligible needs met by the local authority. If the individual wishes to arrange their own care and support, the authority does not have to meet those needs".

 **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)

 **Community facilities**

making use of necessary facilities or services in the local community including public transport and recreational facilities or services

- the adult's ability to get around in the community safely and consider their ability to use such facilities as public transport, shops or recreational facilities when considering the impact on their wellbeing. LAs do not have responsibility for the provision of NHS services such as patient transport, however they should consider needs for support when the adult is attending healthcare appointments.

 **Community facilities**


Ombudsman report (2016)

Arranging travel to hospital is an NHS responsibility , but social care support for the disabled person while attending as an outpatient will be CA 2014 function.

Complaint concerned a disabled person who needed support with every aspect of his personal care.

On occasions outpatient visits would take 8 hours – during which he needed support throughout this time to be able to eat, drink and go to the toilet.


Complaint 15 015 000 Barnsley MBC 27/7/16

 **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.

Bristol CC v. S (2015)
 Care proceedings (mother a disabled person)
 'There appears to be a profound lack of knowledge of the responsibilities that arise under the Care Act 2014'
 HH Judge Wildblood 4 para 10.

 **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 (see below) 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)**

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.

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 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.

 **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

 **Care & support plans**

section 25 ~ Care and support plans

Similar to current – but makes PBs mandatory for adults in need and carers

section 26

Amount of a PB is


- The cost to the local authority of meeting the adult's needs

 **Care & support plans**

Evidence based:


- Elderly person with dementia in family arranged care home (she was not coping in her own home);
- She had depression, anxiety attacks, barricaded the doors, needed to visit family to have a shower and had family member stay with her for up to five nights a week;
- Assessment identified need with 6 outcomes;
- Council refused to support the care home placement as her needs could 'easily' be met at home;
- Maladministration: must explain explain how that would be possible.

Complaint – Gloucestershire CC 17 002 906 (2017)

 **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


... . 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)

 **Copies**


Guidance

The assessment

- the individual 'must be given a record of their needs or carer's assessment' (section 12(3) / 12(4) & para 6.98).


Care Plan

- the local authority must give a copy of the final plan in a format that is accessible to the person for whom the plan is intended, any other person they request to receive a copy, and their independent advocate if they have one. (section 25(9) / 25(10) & para 10.87)

 **Reviews / reassessments**

Section 27(1)

- Duty to keep under review care and support plans
- Expectation that plans will reviewed at last every 12 months and light-touch review 6-8 weeks after the plan and personal budget signed off (para 10.42 / 13.32)
- Reviews must person-centred, accessible and proportionate: must involve the 'person needing care and also the carer where feasible' (para 13.2)
- Purpose is identify if the person's needs / circumstances have changed' (para 13.4).
- The 'review must not be used as a mechanism to arbitrarily reduce the level of a person's personal budget' (para 13.4).
- .

 **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


 **Personal Budget (s26)**

Guidance:

- The PB must always be an amount sufficient to meet the person's care and support needs
- Must include the cost to the LA of meeting the person's needs which the LA is under a duty to meet, or has exercised its power to do so.
- Must be broken down into the amount the person pays and the amount the LA will pay.


s26 creates a duty to provide a 'transparent budget in a care and support plan' and a failure to do so will be a breach of public law

CP v. NE Lincolnshire Council [2018]

 **Personal Budget**

Local Government Ombudsman


- Profoundly disabled adult cared for by her mother who had her own health problems: she had eligible care needs for 9 of the 10 outcomes.
- LA assessed a need for 52 wks care a year including 6 weeks respite care. Residential respite not appropriate so the respite funding used for extra home support.
- LA provided a DP of £849.57 a week to meet her normal eligible care needs.

 **Personal Budget**

Local Government Ombudsman
 Detailed explanation as to how DP calculated – ie:
 DP to be used to buy agency support:

- 18 hours at the social rate of £12.24;
- 10 hours at the unsocial rate of £13.36;
- six 30 minute double handed calls at the social rate of £7.01 per call;
- eight 30 minute double handed calls at the unsocial rate of £7.72 per call.

Total £849.57.


 **Personal Budget**

Local Government Ombudsman
 Normal rate £849.57.
 LA then stated that the weekly respite rate - ie when mother not providing unpaid care) would be its standard 'respite care rate' of £659 a week (no calculations provided).

Maladministration

- LA had failed to explain how £659 was enough to meet the daughter's need for respite care
- Had adopted a "one size fits all" approach to people with physical disabilities .

Complaint against Kent CC 13/12/2016 para 18

 **Personal Budget**

Local Government Ombudsman

- The council used a RAS [a Matrix Assessment Tool' ('MAT')] designed to 'ensure limited resources could be fairly allocated to families based on need'.
- The ombudsman held this to be unlawful. That its purpose was:
to ration available resources. The Care Act requires councils to meet eligible needs. It does not allow rationing for any reason (para 83).

Complaint – Wiltshire CC 16 015 946 (2018)



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



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.
-

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.

 **Respite & replacement care**

Replacement care & NHS continuing healthcare?
 What if the replacement care (identified in carer's assessment) is for an adult in receipt of NHS CC funding?


- NHS would be responsible for this.
- What if it failed / refused to provide this?

Social services could make a section 7 request
 Where LA requests co-operation of a 'relevant partner' in relation to an 'individual with needs' or a carer, a carer of a child or a young carer, then it must comply with the request unless it would:

- (a) be incompatible with its duties, or
- (b) have an adverse effect on the exercise of its functions




Information sharing




Information sharing

- **MCA 2005 Guidance**
 - 16.21 Sometimes it will be fairly obvious that staff should disclose information ...
 - 16.22 Other information may need to be disclosed as part of the process of working out someone's best interests. A social worker might decide to reveal information about someone's past when discussing their best interests with a close family member. But staff should always bear in mind that the Act requires them to consider the wishes and feelings of the person who lacks capacity.




Information sharing

GMC guidance (2009)
 You should establish with the patient what information they want you to share, who with, and in what circumstances. This will be particularly important if the patient has fluctuating or diminished capacity or is likely to lose capacity, even temporarily. Early discussions of this nature can help to avoid disclosures that patients would object to. They can also help to avoid misunderstandings with, or causing offence to, anyone the patient would want information to be shared with.
 [para 64]


 **Information sharing**

GMC guidance (2009) para 65

- where a patient lacks capacity, unless they indicate otherwise:
it is reasonable to assume that patients would want those closest to them to be kept informed of their general condition and prognosis

 **Problem solving**

- No arbitrary limits
- Resource panels
- Not assume carer willing / able
- Meeting needs in a less expensive way
- The cheaper arrangements must actually exist, as opposed to being a hypothetical
- The alternative support arrangement must meet the person's eligible needs – ie the detail in the care plan
- Must address the wellbeing principles – including the assumption that the individual is best placed to judge their well-being and the duty to promote their control over their day-to-day life, including over the care and support they receive.

 **Discussion**
