

**Adult Social Care  
Legislation & Policy update**

Luke Clements

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**Programme: morning session**

**Key adult principles and practice**

- Overview Care Act, Statutory Guidance & principles;
- The duty to assess and to support 'adults in need';
- The duty to assess and to support carers;
- The eligibility criteria – managing finite resources;
- Care Planning
- Delegation and the independent sector ;

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**Programme: afternoon session**

**Specifics**

- Personal budgets and direct payments;
- Charging;
- Ordinary residence overview;
- Continuity of care and transitions;
- s117 MHA 1983 and Care Act 2014 interface;

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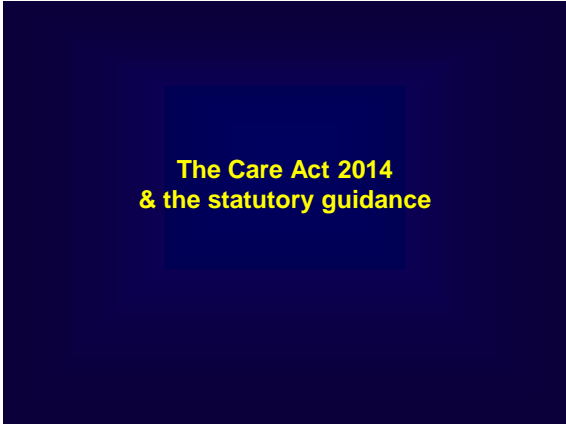
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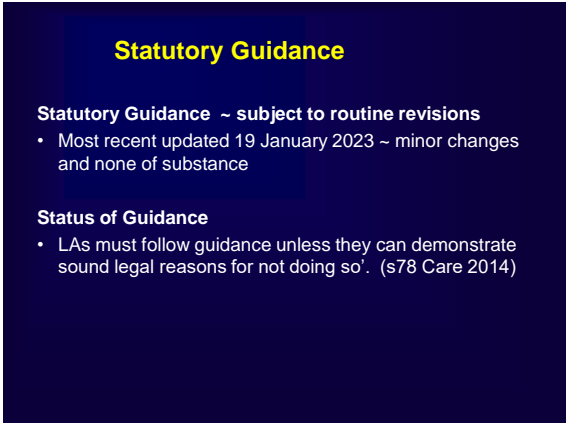
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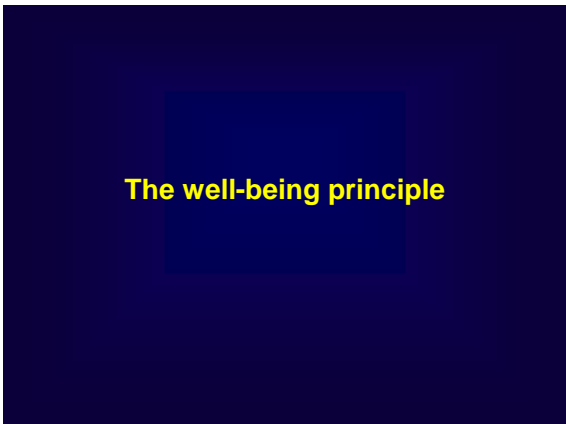
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## Well-being

### “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.

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## 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.

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## Independent living

- The wellbeing principle is intended to cover the key components of independent living, as expressed in the UN Convention on the Rights of People with Disabilities (in particular, Article 19 of the Convention). Supporting people to live as independently as possible, for as long as possible, is a guiding principle of the Care Act

Guidance (para 1.19)

- *Burnip v. Birmingham City Council* (2012)
- *R (Bracking and others) v. SS DWP* (2013)
- *Mathieson v Sec State Work & Pensions* (2015)
- *Hurley v Sec State Work & Pensions* (2015)

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## Assessing needs

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## Duty to assess

**Duty (for adults in need and carers) triggered by 'appearance of need' not a request**

Duty to share copies of assessments and care plans with disabled person / carers

Maladministration not to share drafts too

- The Care Act 2014, ss 9 & 10 require LAs to involve adults in need and carers in their assessments.
- This will generally require the LA to share a draft assessments with individuals and to provide evidence as to how any comments they may make have been taken into account in the process

*Complaint no 20 006 683 Hammersmith & Fulham 2021*

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## Repeated assessments

Adult with limited mental capacity was about to move to a new placement. This was delayed because the LA decided that an MCA assessment had to be undertaken.

Everyone involved in the decision, including the adult, her family, her consultant, the social worker and her existing placement agreed she had to move.

There is no statutory duty to conduct an assessment in respect of every decision in respect of a potentially incapacitated person. The Council appears to have taken an overly restrictive approach to the necessity of the formal assessment and contributed to the delay

*Complaint no 19 014 814 Sandwell MBC (2021)*

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### Adults refusing assessments

#### Section 11

A LA is not required to assess if there is a valid refusal:

But is required to assess if the adult

- lacks capacity to refuse and it is in their best interests; or
- is experiencing, or is at risk of, abuse or neglect.

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### Adults refusing support

#### Ombudsman 2016

- Adult with significant disabilities including difficulties with communication and behaviour.
- Had eligible needs for equipment and personal care but on many occasions declined / cancelled services.
- Council closed the file

Ombudsman held this to be maladministration

- It was the Council's responsibility to ensure his needs were assessed and eligible needs met.

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### Adults refusing support

- His behaviour meant this not straightforward but "*Council should have continued exploring alternative ways to achieve successful assessment and service provision*".
- This was not a case of Mr X choosing not to cooperate, but of his disability causing him difficulties in doing so.

Complaint no. 15 008 589 Suffolk CC 10/10/16

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### Cases of urgency

#### Section 19

A LA may meet an adult's needs which appear to it to be urgent (regardless of OR) without having yet—

- (a) carried out a needs assessment or a financial assessment, or
- (b) made an eligibility determination;

A LA may meet needs ... where, eg adult terminally ill (ie likely to die within the next 6 months)

*R (Ali Raja) v. Redbridge LBC [2020]*

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### Eligibility criteria

#### Care, support and services

*R (RG) v Suffolk CC [2021] EWHC 3368 (Admin)*

The Council argued that a 'holiday' was not a 'need' that could be funded under the CA 2014

It argued that the range of support was limited by the Eligibility Regulations.

The Court held that it was mistaken. Support could be funded in a wide range of ways if the local authority considered that it enabled the individual to achieve one of the outcomes (and even if not, there was a 'power' to fund this under the 2014 Act (section 19)

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#### An adult's needs meet the eligibility criteria if—

- (a) the needs arise from or are related to 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.

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**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.

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**significantly longer than normal**

2016 ombudsman report (Kent CC)

- Assessment stated adult could wash and dress as “if he got too tired, he could rest and complete the task when able”.
- Maladministration

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**Significant**

**Ombudsman**

- Adult with complex mental health difficulties receiving support. Re-assessment found it would take significantly longer than would generally be expected to achieve outcomes associated with work, accessing community services, maintaining hygiene, and maintaining a home environment due to her mental health conditions.
- It then stated that the difficulties did not significantly impact her wellbeing.
- Maladministration ~ assessment provides no explanation why her wellbeing was not significantly impacted by her difficulties to achieve the specified outcomes.

*Complaint against Milton Keynes Council 20/9/16*

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**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.

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**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.

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**Managing & maintaining nutrition**

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.

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## 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.

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## Managing & maintaining 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.

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## 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.

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### 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.

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### 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.

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### 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

Complaint ~ Hammersmith & Fulham 21 July 2016.

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### 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.

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### Housework / nutrition

Complainant receiving a Direct Payment to cover her eligible needs;

On review:

- Although no change 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.

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### 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

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### 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)

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### maintaining a habitable home environment.

**Ombudsman decision :**

An investigation found the council routinely telling people it would not fund support to maintain a habitable home, and that they should find the money themselves

- *In this case the council appears to have decided some needs are more important than others. This is contrary to the Care Act, which places equal importance on all eligible needs – it is designed to ensure councils do not pick and choose which they meet.*

Press Release ~ Hertfordshire CC 19000200 7 September 2020

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### Guidance para 6.106

**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.

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### 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 is 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..

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### Carers Assessments (s10)

#### Duty to assess

- No need for care to be 'regular & substantial'
- No need for a 'request'
- A 'duty' to meet eligible needs

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### 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.

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## Willing & able

### 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

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## 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 6.74 )

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### 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.

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- 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.

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### Guidance para 6.123

**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 to quit work to care;
  - 3 million have reduced their working hours;

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### 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.

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### 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

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### 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)
- Young Carers' (Needs Assessments) (England) Regulations 2015

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### Duty to provide care & support

#### section 18 ~ 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 (but not if in a care home)

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### Care, support and services

*R (RG) v Suffolk CC* [2021] EWHC 3368 (Admin)

The Council argued that a 'holiday' was not a 'need' that could be funded under the CA 2014

It argued that the range of support was limited by the Eligibility Regulations.

The Court held that it was mistaken. Support could be funded in a wide range of ways if the local authority considered that it enabled the individual to achieve one of the outcomes (and even if not, there was a 'power' to fund this under the 2014 Act (section 19)

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### 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.

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### 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)**

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### 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 no 15 019 443, against Kent CC, 20 October 2016 and  
Complaint no 16 010 036 against Sheffield CC 3 April 2018

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### Care & Support Plans

The duty to meet the needs is 'non resource-dependent'.

- ie if the assessment identifies a need for (say) 10 hours of personal care services a week – then this need must be met precisely and it is not something that the LA can 'trim' because it has to make cutbacks due to resource shortages.

*R v Islington LBC ex p Rixon (1997)*

- There can be no 'maximum' packages

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### 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)

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## 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)

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## Delegation

### section 79

Enables LAs to delegate all of their functions under the Act – with few exceptions (eg safeguarding);

(6) Act / omissions by delegated body to be treated as done / omitted to be done by the LA.

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## Contracting out

Councils cannot contract out responsibility for care when they contract out the provision: poor quality care by a council funded provider is poor quality care by the council itself.

Michael King Local Government and Social Care  
Ombudsman 27 February 2018

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## Personal Budget (s26)

### Guidance:

- The PB must always be an amount sufficient to meet the person's care and support needs
- 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]*

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## 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.

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## 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.

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## 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

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## Direct Payments (ss 31 - 33)

The Direct Payment regulations 'soften' the presumption against making payments to spouses / partners / relatives living in the same house;

- payments can be made 'if the LA considers it is necessary to do so'; and
- payment can include not only the cost of meeting the adult's need – but also for the cost of providing administrative and management support or services

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## Direct Payments

- LAs 'must not restrict choice or stifle innovation'
- pre-payment cards cannot be mandatory nor may they 'limit choice and control' as direct payments should 'encourage flexibility and innovation'

Statutory Guidance para 12.4 and 12.59

- NICE 2018 Guidance on DPs states that their care plans should be flexible to 'accommodate changes to a person's priorities, needs and preferences' and that in order to facilitate this, local authorities should consider 'agreeing a rolling 3-monthly budget so that people can use their money differently each week'.

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63

### Direct Payments & respite care

- It is unlawful for a council to refuse DPs for an individual who wishes to use it to pay for an eligible need – eg respite care
- A complaint concerning a decision by a LA that DPs would no longer be available to fund respite care because it had introduced block purchased such care and required individuals to pre book for this support.

Complaint no 19 008 804 Staffordshire, 2020

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64

### Charging

Power to charge – not a duty (section 14) ;

- Councils cannot charge more than 'reasonably practicable' for the person to pay (SG para 8.2)
- Wicked detail in the Annexes to Statutory Guidance

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65

### Charging & DRE

**Annex C para 40 of SG includes:**

- privately arranged care services (eg respite care), the additional costs of special dietary needs due to illness or disability; above average heating costs and special clothing or footwear etc.

**Ombudsman cases have included:**

- telephone bills, hair braiding, live in carers food costs, holidays, transport costs, pet care costs etc.

The ombudsman has stressed the need for councils to be 'flexible'.

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66

## Charging

### *RW v Windsor & Maidenhead* [2023]

- LA accepted that *RW* had eligible needs for support to develop and maintain personal relationships and provided funding for him to attend a social and life skills group.
- The group's programme involved members attending various activities which the authority did not fund.
- *RW* argued that these costs should be considered as DRE
- LA stated that these costs could never be DRE.
- The High Court disagreed

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67

## Charging

### *RW v Windsor & Maidenhead* [2023]

*The power in the DRE regulations has as its existential purpose the reasonable and fair assessment of the ways that we as a community can support people living with disability. This is the approach the defendant must take.*

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68

## 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.

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69

### Ordinary residence cases

#### *Shah v Barnet LBC* (1983)

- a regular, habitual mode of life in a particular place, the continuity of which has persisted despite temporary absences.
- A person’s attitude is only relevant in two respects;
  - the residence must be voluntarily adopted, and
  - there must be a settled purpose in living in the particular residence.
- whether of short or long duration.

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70

### Special rules for: ‘prescribed accommodation’

1. Care home – ie registered under the CSA 2000;
2. Shared lives scheme accommodation
3. Supported living accommodation.

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71

### The two ‘deeming provisions’ (s39)

1. A person is deemed to be OR in the area in which s/he was OR immediately before prescribed accommodation was provided.
2. A patient for whom NHS accommodation is provided is deemed to be OR in the area in which s/he was resident before the NHS accommodation was provided.

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72



**Self funders**

First deeming provision (placements in 'prescribed accommodation') only applies if LA '**made the arrangements**' for the accommodation

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73

**Self funders**

**R (Greenwich LBC) v SS Health (2006)**

- D – a self funder in a Bexley residential home
- Due to problems at the home had to move urgently.
- The only suitable placement put forward by Bexley was a home in Greenwich – to which she moved.
- 4½ weeks later capital drops below maximum limit and she becomes entitled to LA funding.

**Held** – Although Bexley had contacted the home & arranged a visit for D, such that she had not chosen the new home - nevertheless D had ceased to be '**OR**' in Bexley. Her house had been sold and she was no longer living in the area, and therefore her ties were severed.

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**R (Greenwich LBC) v SS Health (2006)**

**Charles J**

- what the position would be if the arrangements should have been made but had not been made. It seems to me that if the position is that the arrangements should have been made ... that the deeming provision should be applied and interpreted on the basis that they had actually been put in place by the appropriate local authority.

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### s39 Care Act 2014

#### The NHS deeming provision:

- A patient for whom NHS accommodation is provided is deemed to be OR in the area in which s/he was resident before the NHS accommodation was provided.

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76

### Continuity of care (portability)

#### sections 37-38

- If 1<sup>st</sup> authority notifies 2<sup>nd</sup> authority that person is moving;
- When move happens:
- If 2<sup>nd</sup> authority not assessed / or put in place care plan for adult in need and/or carer:
- Then 2<sup>nd</sup> authority must meet the same needs as 1<sup>st</sup> authority
- Until it has assessed / produced care plan

If 2<sup>nd</sup> authority's assessment of adult / carer differs from 1<sup>st</sup> authority's it must provide written explanation

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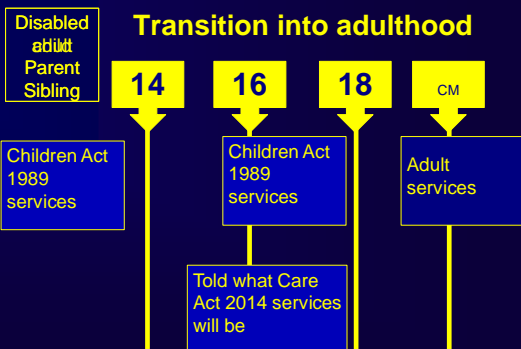
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77

### Transition into adulthood




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78

### Transitions ~ Care Act 2014 ss 58 - 59

#### General formula

Where it appears to a LA that:

1. it is 'likely' that [person] will have care & support needs after transition
2. it to be of significant benefit to be assessed;

Must assess (with consent / BI assessment)

LA must give reasons if it refuses to assess

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79

### Transitions ~ at 18

CA 1989 s17ZH ~ LAs can continue to provide services under CA 1989 s17 and/or CSDPA 1970 s2 even though the young person has reached the age of 18.

Statutory Guidance (para 16.67)

- families must not faced with a gap in provision of support on the 18<sup>th</sup> birthday - if by that date the necessary support not in place then the existing services must be continued until the 'relevant steps have been taken'

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80

### s117 Mental Health Act 1983

Patients detained under:

- s3 MHA 1983
- (or a criminal provisions)

when discharged

- care services under s117 MHA 1983;
- free
- joint NHS / social services duty

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81

**s117 MHA 1983 & Ordinary residence**

**NHS deeming rule applies:**

- ie on discharge, the responsible LA is generally the one in whose area the individual was OR before admission to hospital:

But

**No LA deeming rule:**

- ie that a person is OR in the area in which they were based immediately before prescribed accommodation was provided by an authority.

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82

**s117 MHA 1983 & Ordinary residence**

**R (M) v Hammersmith & Fulham LBC (2010)**

- Accommodated in a care home in Hammersmith LBC funded by Hammersmith: therefore OR in..... ?
- Admitted to hospital after an accident and on discharge placed in a care home in the Sutton LBC care home funded by Hammersmith LBC: therefore OR in..... ?
- Admitted to a psychiatric unit under s2 MHA 1983 and on discharge returns to same care home in Sutton LBC: therefore OR in..... ?
- Admitted again but this time under s3 and on discharge returns to same care home: therefore OR in..... ?

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**s117 MHA 1983 & Ordinary residence**

**R (Worcestershire CC) v SS Health & SC [2023]**

JG lived in Worcester and was detained under s3 MHA 1983; Worcestershire CC was therefore the responsible LA. It was agreed that it was in her best interests to move to a residential placement closer to her daughter, in Swindon; When living in Swindon she was detained under s3. On discharge a dispute arose as to which LA was responsible;

The Supreme Court decided that:

- She was OR in Worcestershire until she was detained under s3 – after which she was OR in Swindon

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84

**S117 Mental Health Act 1983**

- If / when the Mental Health Bill becomes law, it will (via clause 39) bring the s117 ordinary residence rule (for local authorities) into line with the Care Act 2014 rule.

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85

**S117 / CA 2014 overlap**

**Section 39(4) CA 2014**

- An adult who is being provided with s117 accommodation is to be treated for CA 2014 purposes as OR in the area of the LA on which the duty to provide the adult with services under s117 is imposed.

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86

**s117 Mental Health Act 1983**

**section 75**

- 'after-care services' are now defined
- subsection (6) limits services to those:
  - (a) 'arising from or related to the mental disorder' and
  - (b) reducing the risk of a deterioration of the person's mental condition (ie that may require re-admission)

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87

**s117 Mental Health Act 1983**

**Assessments**

- s117 assessments under NHS & CC Act 1990
- CA 2014 assessments of Adults under s9 CA 2014
- CA 2014 assessments of carers (even if caring for an 'exclusive' s117 person, under s10 CA 2014)
- No eligibility criteria for s117

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88

**s117 Mental Health Act 1983**

**Supported Living**

When accommodation is part of a person's section 117 aftercare, it must be free to the person. Councils and NHS organisations should not advise people to claim benefits such as Housing Benefit to pay for accommodation that is part of their section 117 aftercare. '

Complaint no 20 006 910 13 (Lewisham LBC) April 2021  
and

Complaint no 21 004 603 (Luton BC) March 2022 (where the s117 funded care home de-registered to a supported living placement).

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