

# Accessing support for people with NRPF under the Care Act 2014

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# Content of training

- ▶ General duties and meanings;
- ▶ Assessments;
  - ▶ When to assess;
  - ▶ Which LA to refer to;
  - ▶ Refusals by the adult /capacity;
  - ▶ Eligibility;
- ▶ Meeting needs;
- ▶ Exclusions;
- ▶ Accommodation under the Care Act 2014;
- ▶ Pregnant women with NRPF accessing support under the Care Act 2014;
- ▶ Interactions with other statutory framework;
  - ▶ Asylum Support
  - ▶ Children Act 1989
- ▶ What makes a good referral
- ▶ Issues that may require challenging

# Wellbeing Duty

- ▶ General duty to promote an individuals wellbeing. This includes:
  - ▶ Personal dignity
  - ▶ Physical and mental health and emotional wellbeing;
  - ▶ Protection from abuse and neglect;
  - ▶ Control by the person of day-to-day life;
  - ▶ Participation in work, education, training or recreation;
  - ▶ Social and economic wellbeing;
  - ▶ Domestic, family and personal relationships;
  - ▶ Suitability of accommodation;
  - ▶ Contribution to society.

# Preventative duty

- ▶ Local authorities have a general duty to provide services, facilities or resources that will:
  - ▶ contribute toward preventing or delaying the development by adult in its area with needs for care and support and carers in its area with needs for support; and/or
  - ▶ Will reduce the needs for care and support for adults and carers in its area.

# Needs for care and support

- ▶ To be eligible for support under the Care Act 2014 an adult must have needs for care and support which has been previously defined as “looking after”:

“doing something for the person cared for which he cannot do himself or should not be expected to do himself.”

Examples:

- 1) household tasks that an elderly person can no longer perform (or can but it now takes a significantly longer time for he or she to complete)
- 2) Personal care or hygiene routines for a physically disabled person;
- 3) Protection from risks for a mentally disabled person who is unable to perceive risk/danger.

# Assessments



# When to assess - Adult with Care Needs

- ▶ **Low threshold:** “where it appears to an LA that an adult may have needs for care and support” LAs must assess whether that adult has needs for care and support and, if so, what those needs are.
- ▶ LAs are required to carry out an assessment regardless of their views in relation to whether or not someone may or may not have needs, whether their needs are eligible or whether the person themselves is eligible to receive support (eg: due to immigration status).
- ▶ It is likely that a referral from the voluntary sector will trigger this duty.
- ▶ If a referral from a charity is met with refusal, this will likely be challengeable.
- ▶ Where an adult refuses the assessment the LA are no longer bound by their duty to carry out an assessment unless:
  - ▶ The adult lack capacity;
  - ▶ The adult is experiencing or is at risk of abuse or neglect.

# When to assess - Carer

- ▶ Carer: An adult who provides or intends to provide care for another adult.
- ▶ Low threshold: “where it appears to a local authority that a carer may have needs for support (whether currently or in the future)”.
- ▶ The duty to assess applies regardless of the Council’s views in relation to the carer.
- ▶ The assessment will look at whether the carer is able and willing to continue to provide care for the adult with care needs and the impact of doing so.
- ▶ **TIP:** when making a referral for an adult with care needs it is worth asking whether they rely on anyone to assist with their needs. If they do it is worth exploring with the carer whether they consider they have any needs for support. If so, a joint referral requesting **both** a carer’s assessment and an assessment of the adult with care needs.

# When to assess - Young Carer

- ▶ Young Carer: *“a person under 18 who provides or intends to provide care for another person”*
- ▶ Low threshold: where:
  - ▶ (a) it appears to the authority that the young carer may have needs for support, or
  - ▶ (b) the authority receive a request from the young carer or a parent of the young carer to assess the young carer's needs for support.
- ▶ General duty on LAs to *“take reasonable steps to identify the extent to which there are young carers within their area who have needs for support.”*

# Which LA to refer to?

- ▶ Test for which LA to provide support is ordinary residence as defined in *Shah*:  
*“a man’s abode in a particular place or country which he has adopted voluntarily and for settled purposes as part of the regular order of his life for the time being, whether of short or long duration.”*
- ▶ Where the adult is of no settled residence, he/she should be referred to the local authority where they are physically present .
- ▶ Therefore destitute adults should be referred to where they are at time.
- ▶ Issues can sometimes arise where a destitute adult is in and out of hospital - in these circumstances, a referral can be made to the local authority in which the hospital is located.
- ▶ Where there is a dispute as to which LA should provide support - LAs should follow the procedure set out in The Care and Support (Disputes Between Local Authorities) Regulations 2014.
- ▶ Importantly: *“The authorities **must not** allow the existence of the dispute to prevent, delay, interrupt or otherwise adversely affect the meeting of the needs of the adult or carer to whom the dispute relates.”*

# Assessment timeframe

- ▶ There is no specified timeframe in carrying out an assessment under the Care Act although the statutory guidance sets out:
  - ▶ *6.29 An assessment should be carried out over an appropriate and reasonable timescale taking into account the urgency of needs and a consideration of any fluctuation in those needs. Local authorities should inform the individual of an indicative timescale over which their assessment will be conducted and keep the person informed throughout the assessment process.*
- ▶ Therefore if an adults needs are going unmet due to an unexplained delay and this is causing a detrimental impact on the adult, this delay may be challengeable.

# Refusing an assessment

- ▶ Where an adult refuses the assessment the LA are no longer bound by their duty to carry out an assessment unless:
  - ▶ The adult lack capacity;
  - ▶ The adult is experiencing or is at risk of abuse or neglect.
- ▶ Capacity: where a local authority considers the adult would experience substantial difficulty in any of the following:
  - ▶ understanding or retaining relevant information;
  - ▶ using or weighing that information as part of the process of being involved;
  - ▶ communicating their views, wishes or feelings (whether by talking, using sign language or any other means)

They are under a duty to arrange for an independent advocate to represent and support the adult.

# Eligibility criteria

- ▶ *An adult's needs meet the eligibility criteria if—*
  - ▶ *the adult's needs arise from or are related to a physical or mental impairment or illness;*
  - ▶ *as a result of the adult's needs the adult is unable to achieve two or more of the outcomes; and*
  - ▶ *as a consequence there is, or is likely to be, a significant impact on the adult's well-being.*
  
- ▶ *Outcomes:*
  - (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 any caring responsibilities the adult has for a child.*

## Eligibility criteria cont'd

- ▶ *an adult is to be regarded as being unable to achieve an outcome if the adult—*
  - ▶ *is unable to achieve it without assistance;*
  - ▶ *is able to achieve it without assistance but doing so causes the adult significant pain, distress or anxiety;*
  - ▶ *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*
  - ▶ *is able to achieve it without assistance but takes significantly longer than would normally be expected.*

Meeting assessed needs



# Duty to meet eligible needs

- ▶ Under section 18 of the CA 2014 where an LA has assessed an adult has eligible needs for care and support they have a duty to meet these needs where:
  - ▶ the adult is ordinarily resident in the authority's area or is present in its area but of no settled residence; and
  - ▶ There is no charge for meeting the needs or if there is either the adult's financial resources are below the limit or the adult lacks capacity to arrange for the provision of care and support and there is no one authorised to do so on their behalf.
- ▶ Where it can be shown that these needs are met by a willing carer- these duties do not apply (section 18(7)). **\*\*NOTE:** arguably this should not be relied upon until an assessment of the carer has been carried out to confirm they are willing and able to provide support and care required by the adult.

***NOTE: This duty is subject to exclusions (below)***

# Power to meet other needs

- ▶ Section 19 of the Care Act 2014 sets out the power of local authorities to meet non-eligible needs for care and support.
- ▶ This power can be exercised following an assessment or prior to an assessment where the need is urgent (regardless of whether the adult is ordinarily resident in its area).[section 19(3)].
- ▶ In cases where it appears clients have needs for care and support that require **urgent attention** a request can be made that the LA exercise this power to provide the services whilst they carry out an assessment.
- ▶ Therefore if LAs respond to such a request stating they can never provide services until an assessment is carried out this is **incorrect in law and challengeable**.
- ▶ Following an assessment if it has been identified that a client has needs for care and support that do not meet the eligibility criteria, the LA can still meet these needs by exercising their discretion if the adult is ordinarily resident in the authority's area or in the area but of no settled status.
- ▶ Where a LA is aware (or ought to be aware) that an adult has a non-eligible need and if that need went unmet there would be a significant risk of harm to the adult (including abuse or neglect) it is arguable that this power is elevated to a duty in conjunction with the LA's human rights obligations.

# How to meet needs

- ▶ LAs can meet an adult's needs under the Care Act by providing:
  - ▶ accommodation in a care home or in premises of some other type;
  - ▶ care and support at home or in the community;
  - ▶ counselling and other types of social work;
  - ▶ goods and facilities;
  - ▶ information, advice and advocacy.
- ▶ This can be done by:
  - ▶ arranging for a person other than it to provide a service;
  - ▶ itself providing a service;
  - ▶ making direct payments.
- ▶ Note : this is not an exhaustive list. Where an LA identifies an eligible need for care and support they have a **wide discretion** as to how to meet it.

# Exclusions



# Section 21 Care Act 2014 (“Destitution-Plus test”)

- ▶ LA may not meet the needs for care and support of an adult subject to immigration control whose needs for care and support have arisen solely—
  - ▶ because the adult is destitute, or
  - ▶ because of the physical effects, or anticipated physical effects, of being destitute.
- ▶ Adults subject to immigration control:
  - ▶ Requires leave to enter or remain in the UK (but does not have it); or
  - ▶ Has leave to enter or remain in the UK but with an NRPF restriction; or
  - ▶ Has leave to enter or remain given as a result of a maintenance undertaking;

# Schedule 3 Exclusion

- ▶ The following adults are excluded from receiving support under Part 1 of the Care Act:
  - ▶ Non-EEA nationals with refugee status abroad;
  - ▶ EEA nationals;
  - ▶ Failed asylum seekers;
  - ▶ Those who are in the UK in breach of the immigration laws (and who are not asylum seekers);
  - ▶ Failed asylum seekers with a dependent child who the SSHD consider have failed (without reasonable excuse) to take reasonable steps to leave the UK or put themselves in a position to leave the UK.
- ▶ Except where it is necessary to avoid a breach of their human rights or rights under the EU Treaties.
- ▶ In order for an LA to refuse to support an adult with needs for care and support they **must have carried out a human rights assessment.**
- ▶ If there are no legal or practical barriers to the adult returning to their country of origin, it is likely the LA will refuse to support them. In these circumstances it could be difficult to challenge this decision.

# Other exclusions

- ▶ An LA should not provide or arrange services that should be provided by the NHS to meet health needs unless doing so would be incidental or ancillary to doing something else to meet needs for care and support. [s.22]
- ▶ An LA is also prevented from providing housing for adults with care needs where it should be provided under the Housing Act 1996. [s.23]

# Accommodation under the Care Act 2014



# When can accommodation be provided?

## Accommodation-related needs:

- ▶ Accommodation is usually only provided under the Care Act 2014 where the adult is assessed as having needs that are sufficiently “accommodation-related”.
- ▶ This has previously been defined as:  
*“at least to be care and attention of a sort which is normally provided in the home (whether ordinary or specialised) or will be effectively useless if the claimant has no home.”* [paragraph 48].

## Examples of needs likely to be considered “accommodation-related” :

- ▶ Requiring assistance with personal hygiene, toileting etc;
- ▶ Requiring assistance in food preparation and advice as to when or what to eat;
- ▶ Requiring assistance in cleaning/tidying;
- ▶ Requiring help in recognising risks or dangers within the home.

# Assessing accommodation related needs

- ▶ Where it has identified that an adult has eligible accommodation-related needs a Local Authority must consider as part of the assessment whether to provide accommodation.
- ▶ In deciding how to meet an adult's needs for care and support a LA should not take into account the hypothetical offer of asylum support accommodation under section 95 or section 4 IAA 1999. [*Westminster v NASS*]
- ▶ Arguments can also be made that where an adult has accommodation-related needs that have been identified and the adult has no suitable alternative accommodation, in conjunction with human rights obligations of LAs a refusal to do so would be unlawful.



Pregnant women with NRPF and  
access to Care Act support

# Previous legislation

- ▶ Under the previous legislation (National Assistance Act 1948) there was an express provision that gave LAs a specific power to provide residential accommodation for expectant and nursing mothers who are in need of care and attention which was not otherwise available to them.
- ▶ During a government consultation on the Care Act eligibility regulations, responders including mostly local authorities, confirmed that no one who would have been provided with accommodation under the previous legislation would fall out of scope of the Care Act.
- ▶ However in drafting the Care Act, regulations and statutory guidance, any reference to expectant mothers was omitted.

# How to obtain support for NRPF women under the Care Act 2014

- ▶ LAs can use their discretionary power under Section 19(1) of the Care Act 2014 to provide support to pregnant women.
- ▶ NB: this is still subject to the Schedule 3 and destitution plus exclusion.
- ▶ LAs can provide accommodation and support where the need is urgent without completing the assessment;
- ▶ For longer term support for women with NRPF the following will have to be established:
  - ▶ She is far enough along in her pregnancy that she has needs for care and support and/or she has additional physical or mental conditions that give rise to needs for care and support (other than solely destitution).
  - ▶ Support should be required to avoid a breach of their human rights.
- ▶ When referring an NRPF pregnant woman to a local authority it is useful to highlight the NRPF Network guidance: <http://guidance.nrpfnetwork.org.uk/reader/practice-guidance-families/adults-with-care-and-support-needs/#81-pregnant-women>
- ▶ It may also be useful to make both a Care Act and a Children Act referral - as some local authorities may decide the most practical way is to provide the pregnant woman with support and accommodation under section 17 because as soon as the child is born the LA will be required to assess under section 17.
- ▶ Accessing this support under the Care Act 2014 can be difficult for destitute pregnant women without children as the threshold to get over the Schedule 3 exclusion will be a high one (Article 3 inhumane and degrading treatment/Article 8 private and family life).

# Interaction with other statutory frameworks



# Asylum Support

- ▶ Asylum seekers are not barred from support under the Care Act by Schedule 3
- ▶ Therefore asylum seekers with eligible needs for care and support can receive support from the local authority if they meet the destitution plus test.
- ▶ In these circumstances, it is well established that LAs should ignore support available to asylum seekers from the Home Office (ie section 95 support) when deciding how to meet asylum seeker's eligible care needs.
- ▶ This is further supported by the fact that the HO will take into account any alternative support (including under the Care Act 2014) when deciding whether the asylum seeker qualifies for section 95 support (ie is destitute).
- ▶ In guidance issued by the Home Office, caseworkers are instructed to refer asylum seekers directly to the local authority where it appears they have care needs.
- ▶ The local authority should then carry out an assessment. In urgent cases, the LA can provide support before the assessment has been completed.

# The Children Act 1989

- ▶ In certain circumstances there may be a cross over between the CA 2014 and the Children Act 1989. For example: where destitute NRPF family with children also contains an adult with care needs.
- ▶ Generally support under the Children Act is more accessible (as there is no need to overcome the destitution-plus test or schedule 3 for the children) however there is an argument that the family could receive accommodation and subsistence under the Children Act as well as additional support under the Care Act to assist with the adult's needs for care and support and potentially any young carers.
- ▶ Therefore in those cases it is advisable to make referrals to both children services and adults services to ensure that the local authority are fully aware of the needs of the entire family.

# Duty to Co-operate

- ▶ LAs have a duty to co-operate with their relevant partners (eg: NHS Trusts, accommodation providers, other local authorities).
- ▶ It is also very clearly stated in the statutory guidance that there should be internal co-operation between different teams within the local authority. In particular between adult and children services.
- ▶ It is often the case that different teams within a local authority do not co-operate or communicate with each other. It is therefore advisable (if making a number of referrals on behalf of one family) to remind the local authority of their duty to co-operate and include copies of each referral to the respective teams.

What makes a good referral



# What to include:

- ▶ Does the adult have any physical or mental impairments or illnesses;
- ▶ If so, what are the adult's needs arising out of these conditions? Ask basic questions about how they carry out everyday tasks eg:
  - ▶ Preparing food;
  - ▶ Personal hygiene (bathing, brushing teeth, washing face etc.);
  - ▶ Toileting;
  - ▶ Mobilisation;
  - ▶ Dressing;
  - ▶ Engaging in education, training, work;
  - ▶ Recognising risk/dangers
  - ▶ If they have children - how they care for these children (eg how they take them to school, how they feed them, how they dress them etc.)
- ▶ What is the impact of being unable to carry out these tasks? On their own wellbeing? On their relationships with family members?;
- ▶ What would the adult like to achieve by obtaining support from the Local Authority?
- ▶ Medical evidence - GP, Counsellor, physio-therapist etc;

# Issues that may bring rise to a challenge

- ▶ Refusals to assess;
  - ▶ Due to being NRPF;
  - ▶ Due to “only being destitute”
- ▶ Delays in assessing;
- ▶ Disputes between local authorities as to who is responsible;
- ▶ Disputes between local authority and the Home Office as to who is responsible;
- ▶ Failures to provide adequate accommodation and/or support to meet identified care and support needs.

Questions?  
And thanks for listening!

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