

Care Act 2014 – the main themes

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Where did the Care Act come from?



- Law Commission Report in 2011
- Draft Bill in 2012
- Lengthy parliamentary scrutiny
- Royal Assent on 14 May 2014
- Partial implementation in April 2016

What does the Care Act 2014 replace?

- National Assistance Act 1948
- Health Services & Public Health Act 1968
- Chronically Sick and Disabled Persons Act 1970 (but only for adults)
- Health & Social Services & Social Security Adjudications Act 1983
- Disabled Persons (Services, Consultation and Representation) Act 1986
- Parts of NHS & Community Care Act 1990
- Parts of Health & Social Care Act 2001

Statutory Guidance to accompany the Care Act 2014

- June 2014 saw 431 pages of draft Statutory Guidance on the Care Act 2014: see https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/315993/Care-Act-Guidance.pdf
- Replaced by 506 page of statutory guidance in October 2014: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/366104/43380_23902777_Care_Act_Book.pdf

Key terms in the Act

- Adult : someone over the age of 18
- Carer : Mostly unpaid carers (but what about paid through Direct Payments)
- The duty to “promote that individual's well-being”: s1
 - Extended definition under s1(2)
 - List of “have regard” factors under s1(3)

What does “have regard” mean in an Act?

- See Aitkens LJ in *R (Brown) v Secretary of State for Work and Pensions* [2008] EWHC 3158 (Admin)
- Decision makers must be made aware of factor
- Mind of the decision maker must be focused on factors at material time
- Exercised in substance, with rigour and with an open mind
- Non-delegable duties
- Continuing duties throughout the process to determine what is and is not needed to promote a person’s well-being
- Need to make records to show audit trail

What does “well being” mean



The Statutory Guidance says at paragraph 1.21:

“Promoting wellbeing does not mean simply looking at a need that corresponds to a particular service. At the heart of the reformed system will be an assessment and planning process that is a genuine conversation about people’s needs for care and support and how meeting these can help them achieve the outcomes most important to them”

- But where is the money to pay for this type of person centred approach?

Preventative services

- Huge focus on preventative services in Care Act
- Guidance says:

“It is critical to the vision in the Care Act that the care and support system works to actively promote wellbeing and independence, and does not just wait to respond when people reach a crisis point. To meet the challenges of the future, it will be vital that the care and support system intervenes early to support individuals, helps people retain or regain their skills and confidence, and prevents need or delays deterioration wherever possible”

What does this mean in practice?

- Services to those not yet eligible for support
- Have regard to factors in s2(2)
- Professor Clements: “In many local authorities this would require (in essence) disinvestment in crisis services and is not realistic”
- But that is legal duty and hence resources must be applied to preventative services

Duties of Co-operation

- Extensive legal duties of co-operation with a wide range of other public bodies (NHS, police, etc)
- Build on duties at present (eg under NHS Act) but still do not provide clear basis for information sharing
- Not clear if anything will change in practice

Information Provision Duties



S4(1): A local authority must establish and maintain a service for providing people in its area with information and advice relating to care and support for adults and support for carers

- Must include how to access independent financial advice
- Services for all carers and adults, not just those with priority need
- Can be outsourced

Market promotion duty

- Part of duty is on local authority and part on Care Quality Commission
- Consequence of delivering social care through private businesses
- Two primary problems:
 - Failure of large providers: CQC's role
 - General duty to promote high standards: local authority

Local Authority market promotion duty



S5(1): A local authority must promote the efficient and effective operation of a market in services for meeting care and support needs with a view to ensuring that any person in its area wishing to access services in the market—

- a) has a variety of providers to choose from who (taken together) provide a variety of services;
- b) has a variety of high quality services to choose from;
- c) has sufficient information to make an informed decision about how to meet the needs in question.

Local Authority market promotion duty (2)



- List of “have regard” factors in s5(2)
- Conflict between duty to promote market and being the main purchaser and body that sets the price
- Raises competition issues and market dominance
- CQC role for larger or specialist providers