

Newsletter

Luke Clements Training: **socio-legal training**

Care Act 2014—special edition

Overview

This briefing note concentrates on the basic provisions in the Care Act 2014. A subsequent briefing will look at the ‘wicked’ detail within the draft Guidance and Regulations that were published in June 2014 for consultation.

A major problem with the Act is that it is designed to reform the law relating to the ‘care and support for adults’. The problem being in the word ‘adults’: many of the ‘community care’ and ‘carers’ statutes also have provisions relating to children (ie young carers; disabled children and parent carers). As a result of a campaign by disabled children’s and carers’ organisations these problems have been addressed – but in large measure via provisions in the [Children and Families Act 2014](#). These changes are considered at the end of this briefing note (p.7): the first part is devoted to the changes that will be made by the Care Act 2014.

Luke Clements was the special adviser to the Parliamentary Select Committee that scrutinised the draft Care & Support Bill (2013).

Background

Terminology

Adult: The Act does not talk of disabled, elderly, or of ill people: instead it uses the word ‘adult’ – but this is generally qualified as being an adult in need of care and support (ie an adult who has a physical or mental impairment or illness).

Carer: A carer is someone 18 or over who provides or intends to provide care for someone but is not contracted to provide the care, or providing the care as formal ‘voluntary work’.

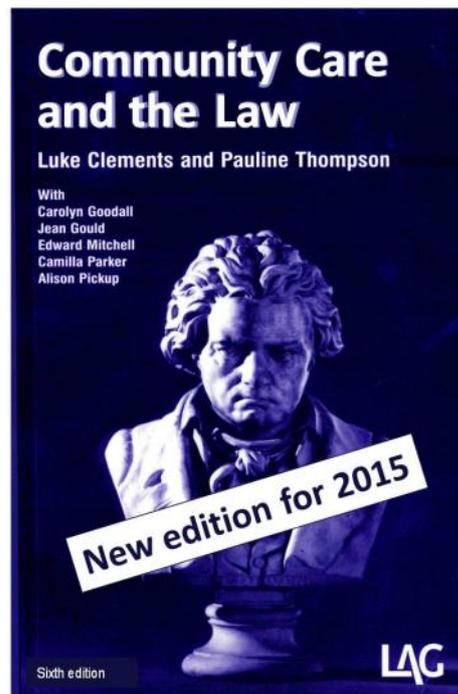
Individual: the Act uses ‘individual’ to mean either an adult ‘in need’ or a carer.

Well-being (s1)

The consultation process leading to the drafting of the legislation resulted in demands that the Act be underpinned by a coherent set of guiding principles (rather like those that apply in relation to the Mental Capacity Act 2005, s1). Many consultees argued that these principles should include (for example) ‘dignity’ and ‘independent living’ (ie that the care planning process should aim to promote independent living and should not subject anyone to indignity).

The Act does not have such a set of principles – it merely has a general duty to promote the well-being of individuals (ie adults and carers). The duty applies to local authorities and their staff / members when exercising ‘any function’ under Part 1 of the Act (ie sections 1-80).

Well-being is widely defined. It includes personal dignity, physical and mental health and emotional well-being; protection from abuse and neglect; control over day-to-day life; **participation in work, education, training or recreation; social and economic well-being; domestic, family and personal**



relationships; suitability of living accommodation; and ‘the individual’s contribution to society’.

When discharging any obligation under the Act, the local authority must ‘have regard to’ the well-being principles. These are summarised overleaf.

Legislation to be repealed includes:

- 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;
- NHS & Community Care Act 1990;
- All three Carers Acts;
- Health & Social Care Act 2001 (the Act that concerns Direct Payments).

Timetable

- 2011 Law Commission Report;
- 2012 Draft Care & Support Bill published for consultation;
- 2013 Joint Select Committee Scrutiny Report March 2013;
- 2013 Care Bill introduced into Parliament (June);
- 2014 Royal Assent 14 May 2014;
- 2015 Partial implementation;
- 2015 November (?) ‘Cap on care costs assessments commence.
- 2016 The Dilnot (cap on care costs) reforms to be implemented.

Care Act 2014 briefing

Well-being (cont)

When discharging any obligation under the Act, councils must 'have regard to'—

- the individual's views, wishes, feelings and beliefs;
- the need to prevent/ delay the development of needs for care and support;
- the need to make decisions that are not based on stereotyping individuals;
- the importance of individual's participating as fully as possible in relevant decisions (including provision to them of necessary information and support);
- the importance of achieving a 'balance between the individual's wellbeing and that of any friends or relatives who are involved in caring for the individual';
- the need to protect people from abuse and neglect;
- the need to ensure that restrictions on individual rights /freedoms be kept to the minimum necessary.

Prevention (s2)

Councils will be under a general duty to provide a range of preventative services that they 'consider' will:

- (a) contribute towards preventing or delaying the development by adults in its area of needs for care and support;
- (b) contribute towards preventing or delaying the development by carers in its area of needs for support;
- (c) reduce the needs for care and support of adults in its area;
- (d) reduce the needs for support of carers in its area.

Given the very severe budget problems of most councils – and the lack of any significant 'new' money to accompany this legislation – it is difficult to see how this duty can be more than cosmetic: to invest in preventative services, without new money would require a council to disinvest in an existing area. In many councils this would require disinvestment in crisis services and is not realistic.

The longer term value to such a provision – is the creation of an expectation that such arrangements will be developed. When increased funding arrives (as it must) aspirational provisions of this kind may gain traction and prove to be significant.

Integration (s3)

Section 3 places a duty on councils to promote integration with health provision where it would—

- (a) promote the well-being of adults with needs & carers in its area; or
- (b) contribute to the prevention of the development of needs in adults / carers; or
- (c) improve the quality of care provided for adults / carers.

A component of this new duty includes the establishment of what has come to be called the 'Better Care Fund'. The legal mechanism for this fund is complex: essentially s121 Care Act 2014 amends s223B NHS Act 2006 to enable the Secretary of State to attach strings to payments he makes to the NHS Commissioning Board – including that the relevant NHS body has a pooled fund with its local authority(ies) aimed primarily at easing pressure on NHS acute beds – eg to facilitate hospital discharges / prevent unnecessary admissions; promote integrated packages of care etc.

The current proposals envisage the NHS transferring to the fund for 2015 £3.8 billion – although this is not all 'new' money. The fund will, for example, include £130m CCG Carers' Breaks funding; £300m CCG reablement funding; £350m capital grant (inc £220m DFGs monies); and it appears, some of the Care Act 2014 implementation monies – eg for training.

There is considerable doubt as to whether the NHS will be able to make these 'transfers' and research evidence suggests that such 'integrations' are unlikely to be successful. Nevertheless there is a degree of 'integration frenzy' in political policies at the moment (much the same as the 'personal budgets frenzy' that has ruled for the last 5 years).

Despite these concerns and despite the research evidence, councils will however have little or no choice but to be seen to be taking steps to create pooled budgets / integrated funding arrangements.

Information (s4)

Councils will have an enhanced duty to provide adults in need / carers with information about care and support arrangements, including how the system operates; the choices they have (including the choice of providers); how to access this support and how to raise safeguarding concerns. The information duty will also include how to access independent financial advice – which will be of considerable relevance given the choices 'self-funders' will have to make under the new regime – particularly with regard to the Dilnot reforms (see below).

Market management (s5)

The Act contains a range of provisions designed to address the 'supply side' problems with the social care market – ie (a) large providers collapsing (eg the Southern Cross failure in 2011) and (b) the belief that the quality of services is generally poor and deteriorating.

The provisions include 'market oversight' arrangements that will involve the CQC – amongst others (ss 53 – 57) and a temporary duty on councils to intervene if a particular provider 'fails' (ss 48-52).

Section 5 places a duty on councils to promote an efficient / effective local market 'with a view to ensuring' that there is a variety of providers and high quality services to choose from. A key problem concerning diversity /quality is that councils hold a dominant position in this market and have (due to their chronic underfunding) been requiring providers to deliver the same quantity of services each year whilst concurrently imposing cuts to the amount paid. The Select Committee considered that there had to be a mechanism that required local authorities to 'properly take into account the actual cost of care when setting the rates they are prepared to pay providers'. Such a mechanism is not to be found in the Act and so it remains to be seen what the courts will make of the s5 duty – and whether there will be a further flow of cases in which providers challenge the rates imposed by local authorities.

Cooperation (s6-7)

As part of the current 'integration frenzy' policy direction (see above) the Act places further obligations on public bodies to cooperate. 'Exhortations to organisations, professionals and other service providers to work together more closely and effectively, litter the policy landscape' and ss6 & 7 are now added to this list.

Section 6 creates a general duty to cooperate and s7 a specific duty when requested by a local authority. Section 7 is new to adult social care: it is based on an existing provision in the Children Act 1989 (s27) and addresses a defect in the present law. The problem is that there is a duty on social services to notify housing / health bodies if a health / housing need is identified in a community care assessment – but no obligation on the notified bodies to do anything. Section 7 enables social services to request assistance and this must be provided – unless it would be 'incompatible with its duties, or have an adverse effect on the exercise of its functions' (and in such a case the body must provide 'reasons'). Whilst this looks to be a substantial power, there is little evidence that the corresponding power under the Children Act 1989 has been used to any great effect.

Care & support (s8)

Under the current legal regime the object of a community care / carers assessment is to determine (amongst other things) whether there is a need for 'services'. The community care statutes provide exhaustive lists of services that can be provided and the Carers and Disabled Children Act 2000 provides a very generalised statement as to what a carer's 'service' might be. The Care Act repeals these statutes and studiously avoids referring to the word 'service' when describing how a council should respond to an identified need. Instead, s8 contains an illustrative list of what may be 'provided' to an adult in need or carer – namely:

a) accommodation in a care home or in premises of some other type;

- b) care and support at home or in the community;
- c) counselling, advocacy and other types of social work;
- d) goods and facilities;
- e) information and advice.

The absence of such things as 'adaptations', 'travel', and 'holidays' (which are specifically cited in the current law) was considered problematical by the Select Committee and in response to a question it posed of the Department of Health, received confirmation from the Department considered that these services did fall within the ambit of the list - and it is to be hoped that the regulations / guidance will make this explicit.

Local authorities will be able to charge (under s14) for the costs that they incur in providing care and support (under s8) to meet the 'needs' of individuals – ie carers as well as elderly ill and disabled people. The question arises therefore as to whether councils will start charging for such support as advocacy, social work and information. The question is all the more pressing since councils will be able to delegate assessments to the private sector (s79 – see below). In answer to a specific question on this point, the Minister stated that these provisions do 'not give a power to local authorities to charge for carrying out a needs or carer's assessment in any circumstances'.

Delegation (s79)

Councils will be able to delegate all of their functions under the Act – with few exceptions eg safeguarding (ss42 – 47) and charging (s14). Section 79(6) makes it clear that ultimate responsibility in such cases still rests with the local authority (any acts / omissions by the delegated body will be treated as done / omitted to be done by the council). A series of small scale pilots (by third sector not for profit organisations) have run since 2011 to explore the potential for delegation and s79 opens up the possibility of full scale delegation of quite a different order and may be considered by councils facing a steep rise

in their assessment / care planning obligations resulting from their new duties to carers and self funders (see below).

Charging (s14)

Councils will be able to charge for the cost they incur in providing social care support services. The detail will be set out in regulations. Under the current law, there is a duty to charge for residential care services and well established guidance (CRAG) explains how this operates. CRAG will cease to apply but it is likely that something similar will replace it – albeit that (with the Dilnot reforms – see below) significant changes are expected to the capital rules. In relation to non-accommodation charges, the current prohibition on local authorities levying a charge that is more than 'reasonably practicable' for the person to pay has been removed – despite advice by the Select Committee that it be retained. The detail of the new scheme will be in regulations: it appears the intention is to create a standard formula for assessing charges.

Assessments of adults (s9)

The duty in the Care Act to assess adults in need is closely aligned to the existing duty. As with the current law, the duty is triggered by the appearance of need and arises regardless of the 'level' of those needs or the person's financial resources. The assessment must have specific regard to the well-being criteria and must involve the adult and any carer. It is difficult to see how this can be achieved without a face to face assessment.

Decisions as to whether an individual is eligible for support following an assessment will depend in general upon their needs satisfying the 'eligibility criteria' (considered below).

The draft regulations make explicit that the decision about whether an adult has eligible needs, is made on the basis that it does not take into account any support that is being provided by third parties (ie carers). Support from a carer will be taken into account during the development of the care / support plan.

Carers assessments (s10)

The Act makes material changes to the current duty to assess carers' needs. The new duty is triggered by the appearance of need and is no longer dependent upon the carer providing (or intending to provide) regular / substantial care or on the carer making a request.

The principal duty is only owed to adult carers caring for people 18 or over – however the Act contains a specific provisions for carers of disabled children in transition and for young carers in transition into adulthood (considered below - ss58 – 66) and the Children and Families Act 2014 contains significant new duties in relation to parent carers and young carers (see below).

The Act makes explicit a number of principles (some of which are currently only found in guidance), including that the assessment must ascertain:

- if the carer is able / willing to provide & 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

In common with assessments of 'adults in need', decisions as to whether a carer is eligible for support following an assessment will depend in general upon their needs satisfying the 'eligibility criteria' (considered below).

Eligibility criteria (s13)

Where an assessment identifies that an individual has needs for care / support then the council must decide if these needs meet the eligibility criteria. The present legislation makes no reference to 'eligibility criteria': they are currently to be found in guidance (FACS). Eligibility criteria (for both adults in need and carers) will now be placed on a statutory footing and the actual criteria detailed in regulations. Draft regulations have been issued for consultation and these have separate criteria for adults in need and for carers. For adults in need the criteria are very similar to the current criteria – save

only that the 'bands' (ie Critical, Substantial, Moderate and Low) are dispensed with and there is only one criteria – which the person will either meet or not. Put crudely - the criteria are based on whether (1) the person is unable to carry out a basic activity; and (2) the consequence is a significant risk to that person's well being. Some commentators have suggested that the new criteria place the threshold of entitlement closer to the exiting 'moderate' band than the 'substantial' band.

The criteria for carers (put broadly) measure whether as a consequence of providing care, the carer is unable to undertake certain key roles / tasks (ie household activities / other caring responsibilities / employment / education / recreation) or that their health is at significant risk. These draft criteria are also thought by many to be more generous than those currently in place.

The duty to provide (s18-20)

The duty on councils to meet the eligible needs of disabled, elderly and ill people is retained and widened by the Care Act. The present legislation does not (in general) apply to 'self-funders' (ie people whose savings are above the capital limit – currently £23,250) and there is only power to meet a carers assessed needs – not a 'duty'. Both these limitations will be removed.

Where an individual's needs (ie a carer or an 'adult in need') meet the eligibility criteria then there will be a duty to ensure their care and support needs are addressed. The only stipulation being that they are ordinarily resident in the local authority's area (as at present) and that if their assets are above the financial limit, that they 'ask the authority' to meet their needs.

The Government's impact assessment considers that this will increase in the number of assessments (for new care users) by between 180,000 and 230,000 in 2016/17 and the number of reviews (for people already receiving care) by between 440,000 and 530,000 in 2016/17 – increasing local authority costs by over £2bn per annum.

Until the 'cap on care costs' comes

into force in 2016, the incentive for self-funders to have their care and support needs arranged by the local authority will be limited. Care home residents would however benefit if they are able to get the price of their placement at the local authority rate (rather than the self funder rate) which in itself will have a distorting impact on the market.

The main benefits will however flow once the 'cap on care costs' comes into effect in April 2016 together with the new capital rules (considered below). Many adults who may benefit from the cap will want to ensure that their care costs start to be recorded on the 'taxi meter' from the first day that these provisions take effect in April 2016. There is likely, therefore, to be a surge in demand from self-funders in advance of this date. In consequence the Government believes that local authorities should 'consider beginning assessing people who arrange their own care and support from November 2015'.

Cap on costs (s15-16)

The Act implements the Dilnot Commissions proposals. The Commission recommended that the lifetime contribution an individual should make to their care costs should be capped at a maximum of £35,000. The Government has indicated, however, that when implemented in 2016, the figure will be £72,000. This sum will only apply to social care costs. For residents in care homes, £12,000 pa of their care home fees will be deemed to be for 'daily living costs' (ie accommodation, food etc). Ignoring the annual inflation up-rating, it would therefore take over 5½ years for a person paying £25,000 pa care home costs to reach the maximum figure. Only then would they feel any benefit from the proposals (and by then they would have paid over £135,000 in care costs).

In 2016 the capital limits are expected to increase to £118,000 – if a home is included in the calculation – and £27,000 if not.

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The lower capital limit is also expected to rise (to £17,000). The assumption will continue that every £250 above the lower limit will yield income of £1 per week. This means that for someone with savings of £117,000 who seeks local authority assistance, they will have a contribution of £20,000 pa. from the capital – and at the same time lose their DLA / AA care component (because they are council supported).

The proposals – in effect – offer self funders with significant capital a free insurance policy. Once assessed as having ‘eligible needs’ they will have an account opened by the local authority and (in the current jargon) the ‘Dilnot taxi meter’ will start ticking. The self funder can then purchase their care privately and the local authority will record this on their ‘care account’ (s29) – having agreed their ‘independent personal budget’ (s28), namely their social care expenditure (ie the amount attributable to ‘daily living costs’ having been deducted).

The Dilnot provisions are likely to give rise to disputes / complaints / ombudsman interventions concerning such issues as ‘back-dating’ of claims and the amount to be recorded on ‘care account’, delayed reassessments etc. The Act provides for a new statutory appeals process to deal with (amongst other things) this expected increase (s72).

Care accounts will be up-rated for inflation each year, transferred when the person moves to a new local authority and retained for 99 years (s29(2)).

Deferred payments

There will be right to have a deferred payment in relation to a person’s property – although under the new scheme local authorities will be able to charge interest on the loan and interest on their expenses in creating the charge to secure the loan. Although the detail is to be provided in regulations – it appears that the Government intends the right to be limited to people with under £23,250 savings.

Carers’ support (s20)

Section 20 creates a duty to meet the assessed needs of carers and is, as the Government states, ‘the first ever legal entitlement to public support, putting them on the same footing as the people for whom they care.’ The duty is on the council responsible for the adult in need and extends to self-funders (ie carers with assets above the new maximum limits) who request help.

Section 20(7) makes clear that a council may meet some or all of 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 adult has not been held to be eligible for support. **Section s20(8) states that where the adult is refusing to accept the care (that would address the carer’s need) the local authority must ‘so far as it is feasible to do so, identify some other way in which to do so’.**

Care & support plans (s25-26)

The current duty to prepare care/ support plans for individuals whose needs have been assessed as eligible, remains in the new Act. The most significant difference is that every such plan for an ‘adult’ must have a ‘personal budget’ (s25(1)(e)). Since most councils already do this – it will probably make little practical difference.

In preparing a care / support plan the council must involve (among others) the adult for whom it is being prepared; ‘any carer that the adult has’, and ‘any person who appears to the authority to be interested in the adult’s welfare’. In relation to carers, the requirement is to involve the carer for whom it is being prepared, ‘the adult needing care, if the carer asks the authority to do so’ and any other person whom the carer asks.

Section 26 states that the amount of a personal budget is ‘the cost to the local authority of meeting those of the adult’s needs which it is required or decides to meet’. The Select Committee expressed concern that this phrasing was different to the current requirement (in relation to direct payments) – namely that the amount be that which “the authority

estimate to be equivalent to the reasonable cost of securing the provision of the service concerned’: it considered that the word ‘reasonable’ was important and should be included in the Act. In response the Government stated that the wording meant that the amount had to be ‘sufficient to meet’ the adult’s needs. The Select Committee was not reassured by this response – but it is to be presumed that this requirement will be spelled out in the regulations and statutory guidance when finalised.

NHS interface (s22)

A number of amendments were made to the Bill to ensure that the current boundary between local authority responsibilities and the NHS (the so called ‘NHS Continuing Care’ boundary as defined in the *Couglan* Court of Appeal judgment) remained unchanged.

The phrasing of s22 appears to achieve this aim, and the Minister has confirmed that:

‘The provisions in section 22 are not intended to change the current boundary— let me place that clearly on the record— and we do not believe that they will have that result. The limits on the responsibility by reference, as now, to what should be provided by the NHS remain the same’.

This helpful statement is materially undermined by provisions in the draft guidance and regulations which must be clarified in the consultation process (a subsequent briefing will consider the draft guidance and regulations).

Direct payments (s31-33)

The new legislation provides for an almost identical ‘direct payments’ regime and the detail (as with the current system) is to be in regulations. The only significant change is that direct payments will be available for residential care placements. This change is expected to come into force in April 2016 and pilots in 18 councils are currently underway - Enfield, Havering, Redbridge, Surrey, Herts, Norfolk, Bristol, Cornwall, Dorset, Lincolnshire, Milton Keynes, Notts, Staffs, Hull, North Lincs, Gateshead, Manchester & Stockport.

Portability (s37-38)

The Act prescribes the way councils transfer responsibility for the care and support of an adult – when she or he moves from one council area to another. It does this by attempting to embed ‘good practice’ (ie what should happen) into legislation. The problem is that there are no sanctions if either the first or second authority fails to act properly – and so (as now) an individual would have to make a complaint/ go to the Ombudsman if a problem occurs.

Sections 37 – 38 are replete with detailed procedural obligations – but in essence they provide that - where an authority (the first authority) is providing care and support for an adult and another authority (the second authority) is notified that the adult intends to move into their area (and it is satisfied that the intention is genuine), then it must (among other things) undertake an assessment of the adult’s needs (and those of any carers they may have). If the assessment(s) have not been completed by the time the adult actually moves, then the second authority must meet the needs identified by the first authority until its assessment is complete.

Safeguarding (s42–47)

The Act places on a statutory footing some of the safeguarding obligations that are at present, only located in the guidance (principally the ‘No Secrets’ guidance). Section 42 contains a duty to make enquiries if an adult with care & support needs is:

- experiencing, or is at risk of abuse of neglect; and
- is unable to protect him/herself against the abuse / neglect.

The Act does not explain what it means by ‘abuse’ – save to specify that it includes financial abuse which is broadly defined – eg including putting the adult ‘under pressure in relation to money or other property’ and/or the adult ‘having money or other property misused’.

The Act provides no new powers to

protect adults from abuse – merely ‘process’ obligations (eg to have a Safeguarding Board; to undertake investigations and to require individuals to provide information etc). The Welsh Act provides a power of entry – to enable social services to gain access and to speak with a person suspected of being abused – and the Scottish Act contains (in addition) a power of removal. Not only are such powers absent from the English Act, the existing s47 National Assistance Act 1948 power to remove, is repealed. The Care Act 2014 does however, retain the obligation on local authorities to protect property (s47).

Human Rights (s73)

The Care Act extends the current Human Rights Act 1998 protection for care home residents funded by a local authority. Section 73 provides that where care or support is arranged by a local authority, or paid for (directly or indirectly, and in whole or in part) by the authority, and that care is provided by a registered care provider to an adult or a carer either in their own home or in care home – then the provider is deemed to be a public authority for the purposes of the 1998 Act.

After April 2015, therefore, the human rights protection will include individuals (ie carers or adults in need) who receive care / support from a registered care provider in their own homes or the community and will also cover ‘self-funders’ who have asked the local authority to undertake their care and support arrangements (ie under s18 – see above).

Advocacy (s67)

The Act places a duty on councils to arrange independent advocacy if the authority considers an individual would experience ‘substantial difficulty’ in participating in (amongst other things) their assessment and / or the preparation of their care and support plan. The duty does not arise if the council is satisfied that there is some other person who is an appropriate representative (provided

that person is not engaged in providing care for the individual in a professional capacity or for remuneration).

New appeals process (s72)

It is not entirely clear why this provision has been included – but it may be to enable local authorities to react to the expected increase in challenges, when significant numbers of self-funders are catered for in the system.

The Act merely provides for regulatory powers to flesh out what the system will look like. The Government will consult on its proposals and issue draft regulations / guidance ‘later this year’ (ie 2014). Its aim is that the new process will:

- be a flexible, local, proportionate and avoid unnecessary bureaucracy;
- include an element of independence;
- seek to avoid duplication with existing arrangements.

s117 MHA 1983 (s74)

Currently, ‘after-care services’ are not defined by the Mental Health Act 1983. The Care Act inserts a new subsection (5) into the 1983 Act to limit services to those:

- ‘arising from or related to the mental disorder’ and
- reducing the risk of a deterioration of the person’s mental condition (ie that may require re-admission).

The Act confirms that ordinary residence for the purposes of s117 is determined by where a person was based immediately before they were detained and gives the Secretary of State power to resolve ordinary residence disputes. It also inserts a new ‘s117A’ that provides for regulations to introduce a limited ‘choice of accommodation’ for persons subject to s117.

Provisions relating to disabled children, young carers and 'parent carers'

Transition arrangements

Disabled children (s 59 – 60 Care Act)

Although the primary purpose of the Care Act is to reform adult social care law, the Act also contains provisions relating to disabled children and carers 'in transition' to adulthood. These are overly complicated – as the Act contains considerable detail on the issue of consent / capacity to consent and what must be included in the assessment. Put simply however: a council must undertake a needs assessment of a disabled child if it considers that the child is likely to have needs for care and support after becoming 18 and that the assessment would be of significant benefit to the child. Such an assessment is referred to as a 'child's needs assessment'. If a local authority decides not to undertake such an assessment it must give reasons for its refusal.

Parent carers (s61-62 Care Act)

In very similar terms, the Act places obligations on local authorities to assess the disabled child's parents during this transition process. In simple terms the Act provides that a council must undertake a needs assessment of the carer of a disabled child if it considers that the carer is likely to have needs for support after the child becomes 18 and that the assessment would be of significant benefit to the carer. Such an assessment is referred to as a 'child's carer's assessment'. If a local authority decides not to undertake such an assessment it must give reasons for its refusal.

Young carers (s63 – 64 Care Act)

The Care Act also provides for young carers 'in transition'. The Act (in simple terms) requires a council to undertake a needs assessment of a young carer if it considers that she/ he is likely to have needs for support after becoming 18 and that the assessment would be of significant benefit to him / her. Such an assessment is referred to as a 'young carer's assessment'. If a local authority decides not to undertake such an assessment it must give reasons for its refusal.

General arrangements

Parent carers

The Children & Families Act 2014, s90 amends the Children Act 1989 (by adding s17ZD and s17ZE) to oblige local authorities to assess parent carers (referred to as a 'child's carers') on the 'appearance of need' – ie if it appears to a council that a parent carer may have needs for support (or is requested by the parent) then it must assess whether that parent has needs for support and, if so, what those needs are. Such an assessment must include an assessment of whether it is appropriate for the parent to provide, or continue to provide, care for the disabled child, in the light of the parent's needs for support, other needs and wishes. The assessment must also have regard to.

- the well-being of the parent carer ('well-being' has the same meaning as s1 Care Act 2014), and
- the need to safeguard / promote the welfare of the disabled child and any other child for whom the parent carer has parental responsibility.

Having undertaken such an assessment the council must then decide whether the parent and / or the child has needs for support; and if so whether those needs could be satisfied (wholly or partly) by services under Children Act 1989, s17.

There is in addition a strategic duty on the local authorities to take reasonable steps to identify the extent to which there are parent carers within their area who have needs for support.

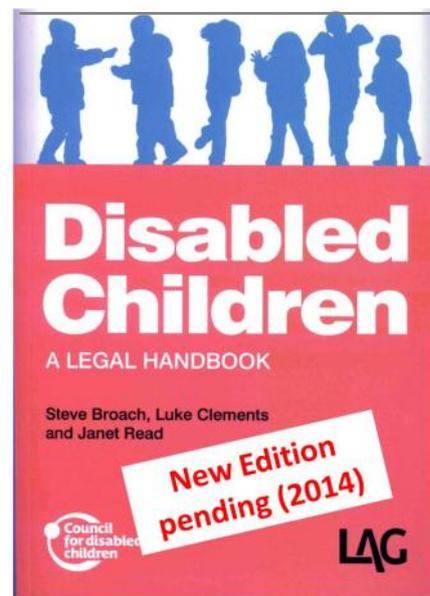
Young carers

At the moment, 'young carer' is not a term that appears in any legislation.

For a council to have an obligation to a young carer she or he has to be labeled a 'child in need' – for the purposes of Children Act 1989, s17.

This has now changed, as both the Care Act 2014 (see above) and the Children and Families Act 2014 address the needs of 'young carers' directly.

The Children & Families Act 2014, s96 inserts a new s17ZA into the 1989



Act to address the needs of young carers. This creates detailed obligations including a duty to assess 'on the appearance of need' (ie without a 'request' having to be made (s17ZA (1)) and a strategic duty on the local authorities to take reasonable steps to identify the extent to which there are young carers within their area who have needs for support (s17ZA (12)). The provisions will come into force in April 2015 to coincide with Care Act implementation. It is expected that where eligible needs are identified in relation to young carers, local authorities will have to either provide support under s17 CA 1989 to the young carer or demonstrate that the 'cared for person's' assessment has provided adequate care and support to prevent inappropriate care being required from the young carer.

Continuity of support

The Care Act 2014, s67 creates a complex set of provisions, the effect of which is (in essence) that the assessments of disabled children / young carers that take place before the young people become 18, will either continue to apply when they become 18 until reviewed or if the local authority do not treat the assessments as a continuing obligation – then they must reassess.

Training courses

Luke Clements Training provides training and consultancy in all areas of adult care (health and social services) and the law relating to disabled children and their carers. Standard courses include:

- Law Reform: The Care 2014;
- Law Reform: The Social Services & Well-being (Wales) Act 2014;
- Community Care Law update;
- Carers Rights and the Law;
- Carers and their New Rights;
- Equality Law and Human Rights in Social Care;
- Mental Capacity, Decision Making and the Law ;
- Disabled Children, the Law and Good Practice;
- Disabled Children and Law Reform;
- NHS Continuing Care Responsibilities;
- Ordinary Residence and the Law;
- Young Carers and the Law.

New resource materials

Cerebra

Luke Clements is collaborating with the National Charity Cerebra and a number of specialist lawyers to produce a series of guides and precedent materials. These are being published on the [Cerebra website](#).

Cerebra is also supporting a [Cardiff Law School programme](#)—the ‘[Legal Entitlements Research project](#)’ for families with disabled children.

Social Care Law Lecture Series

Lectures concerning ‘Social Care Law’ are accessible at www.lukeclements.co.uk/lecture-series/. The intention is to build a complete ‘open access’ guide to the law and its social context on this site.

lukeclements.com

New resources on the www.lukeclements.com website include:

- An overview of the Social Services and Well-being (Wales) Act 2014;
- An article concerning the Global development of the Carers movement and the ‘right to care as a human right’—‘[Does Your Carer take Sugar?](#)’ (also in [Spanish!](#));
- [The Social Care Lecture Series](#) (see above).

Luke Clements Training is a socio-legal training partnership

Partners

Luke Clements and Mo Burns

For details of training fees, terms and availability,

Contact Mo Burns at:

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Mobile 07802 414 612

Email: lukeclementstraining@yahoo.com

A PDF copy of this newsletter is at www.lukeclements.co.uk/training/



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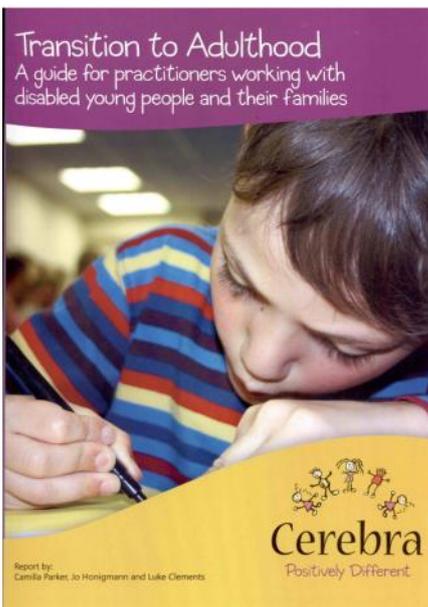
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Law Building, Museum Ave
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Forthcoming Conferences

October 7th 2014

Cerebra: Problem solving in social care London

Contact: rachels@cerebra.org.uk

Telephone 01267 244225

October 17th 2014

Taking Stock: Mental Health & Capacity Law Manchester

Contact enquiries@croesoevents.co.uk

telephone 07891 452260