

INFORMATION SHEET

Making It Happen: Positively managing risk for children and adults with severe learning disabilities

Care Act 2014

Thank you to Doughty Street Chambers for their help with this resource. The following individuals contributed to this resource:

Caragh Nimmo

Sophy Miles

Introduction

Summary information about the Care Act 2014 and how it is relevant to positively managing risk for children and adults with severe learning disabilities during Covid 19.

All our information sheets are available to download free of charge.

To enable us to continue our work [please support us](#) or donate £3 by texting CBF to 70450.

Is this resource helpful? Please spend a few minutes giving us some feedback: www.surveymonkey.co.uk/r/cbfresources

Summary

The Care Act governs the duties of local authorities in relation to social care for adults in England. You can find it [here](#).

There are also regulations which are statutory instruments and much of the detail of the duties in the Care Act appear in the regulations.

In this context, the most useful are:

- The Care and Support (Assessment) Regulations 2014 (SI 2014/2827) ([here](#))
- The Care and Support (Direct Payments) Regulations 2014 (SI/2871) ([here](#))

- The Care and Support (Eligibility Criteria) Regulations 2015 (SI 2015/313) ([here](#))

The Department of Health and Social Care has provided detailed statutory guidance which local authorities must have regard to. It is regularly updated and you can find it [here](#).

Key Points

Section 1(1) Care Act states that

“The general duty of a local authority, in exercising a function under this Part in the case of an individual, is to promote that individual’s well-being.”

The Care Act also:

- Sets out the duties of local authorities to assess the care and support needs of adults and/or their carers (sections 9-12);
- Introduces a national eligibility criteria (section 13) and imposes duties to meet the needs for care and support in certain cases (section 18). Needs will meet the eligibility criteria if they arise from physical or mental health or impairment; and prevent or impede the adult from achieving two or more “outcomes”; and if there is or is likely to be a significant impact on the adult’s wellbeing as a result.
- Sets out the requirements when a local authority is preparing a care and support plan (section 25) and identifying a personal budget (section 26).
- Creates a statutory duty to carry out a safeguarding enquiry when there is reason to believe an adult with needs for care and support is experiencing or at risk of abuse or neglect (section 42)
- Creates a right to advocacy in assessments, safeguarding enquiries and reviews for those who would otherwise have substantial difficulty in taking part (sections 67 and 68)

- Requires private providers of personal care in people's homes or in residential accommodation, arranged or paid for by a local authority, to comply with the Human Rights Act 1998 (section 73).

Some of the duties in relation to assessing and meeting needs have been temporarily replaced by a power through the Care Act "Easements" brought in through the Coronavirus Act 2020. You can find the guidance on the Easements [here](#). You should note that local authorities must still meet needs where failure to do so would breach an individual's human rights and are expected to take "all reasonable steps" to continue to meet needs as now. They must follow the "Ethical Framework" which sets out 8 guiding principles (Respect, Reasonableness, Minimising Harm, Inclusiveness, Accountability, Flexibility, Proportionality and Community). You can read the guidance Ethical Framework [here](#).

Relevance

An activity might be very important to promote a person's wellbeing, which is the guiding principle of the Care Act (section 1). Section 1(2) provides that "wellbeing" includes physical, mental and emotional wellbeing; control over everyday life; and participation in work, training and recreation. The eligibility criteria contain two "outcomes" which are relevant:

- (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.

It is therefore important to assess what support the person will need in order to carry out the desired activity. Then consider whether the person's needs assessment has properly identified the support that they need to achieve the outcome and the impact

on the person's wellbeing if they do not. Note that the local authority is required by section 25(5) Care Act 2014 to take "all reasonable steps" to reach agreement as to how it meets needs, but that this does not mean the local authority has to reach agreement at all costs. The statutory guidance states at 10.5 that

"Ultimately, the guiding principle in the development of the plan is that this process should be person-centred and person-led, in order to meet the needs and achieve the outcomes of the person in ways that work best for them as an individual or as part of a family. Both the process and the outcomes should be built holistically around people's wishes and feelings, their needs, values and aspirations, irrespective of the extent to which they choose or are able to actively direct the process."

Remedies if things go wrong

Although the Care Act contained provisions for appeals against decisions, sadly this part of the Care Act has never been brought into force.

The CBF can direct you to solicitors with expertise in community care. Depending on your means, you may be able to get some legal aid for advice.

If you are dissatisfied with a decision under the Care Act, you may first of all consider speaking to the care manager to see if it is possible to resolve the issue.

Your further remedies are:

- Using the local authority's complaints process;
- A complaint to the Local Government and Social Care Ombudsman (only after a complaint has been made to the local authority);
- An application to the High Court for Judicial Review. An application will only succeed if the local authority's decision is illegal, irrational, or procedurally flawed.

Further resources

The following organisations have online resources about the Care Act:

Social Care Institute for Excellence: click [here](#).

Disability Rights UK: click [here](#).

Reviewed January 2021

© The Challenging Behaviour Foundation, 2021

The Challenging Behaviour Foundation

We are a registered UK charity specifically focussed on the needs of children, young people and adults with severe learning disabilities whose behaviour challenges, and their families. We will make a difference to the lives of people with severe learning disabilities, whose behaviour challenges, and their families by:

- Championing their rights
- Ensuring timely information and support
- Raising awareness and understanding
- Promoting and sharing best practice

To access our information and support, call 01634 838739, email info@thecbf.org.uk or visit our website: <https://www.challengingbehaviour.org.uk>