

# **THE CARE ACT 2014**

## Implications and Opportunities

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Goldsmiths Centre, London

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# Workshop Agenda (1)

- 10.00-11.00 Introduction and Session 1
  - Well-being principle and other key general duties; provider failure and market oversight; transition from children's services
- 11.00-11.15 Group work
  - Is the well-being principle a game-changer?
- 11.15-11.30 Break

# Workshop Agenda (2)

- 11.30-12.30      Session 2
  - Assessment and eligibility – disabled people and carers
- 12.30-12.45      Group work
  - The new eligibility criteria – just ‘substantial’ by another name?
- 12.45-1.30      Lunch

# Workshop Agenda (3)

- 1.30-2.30      Session 3
  - Care planning, personal budgets and direct payments; ordinary residence and continuity of care
- 2.30-2.45      Group work
  - What should be in a good Care Act care and support plan?
- 2.45-3.00      Break

# Workshop Agenda (4)

- 3.00-4.00      Session 4
  - Charging, advocacy, safeguarding
- 4.00-4.15      Group work
  - Making the new safeguarding scheme work in practice
- 4.15-4.30      Close

# INTRODUCTION

## Care Act 2014

- in force from April 2015
- Abolishes most adult community care statutes
- CSDPA 1970 s 2 remains in force for children (up to 18)
- New scheme for adult care
- New duties around transition
- Suite of regulations, single guidance doc

# INTRODUCTION (2)

- Claimed to be ‘most significant reform of care and support in more than 60 years’
- Described by one commentator as the merger of social work practice, values and ethics with statute
- BUT in fact, fundamentals of previous system (assess, decide, provide) remain untouched

# INTRODUCTION (3)

- Summary of major changes
  - Well-being duty
  - Single national eligibility threshold
  - Safeguarding
  - Advocacy
  - Carers right to services
  - Portability
  - Application of HRA 1998 to non-state care providers – section 73



# Session 1 – Well-being

- Well-being duty – section 1
  - Section 1 – a principled approach to care
  - Guidance 1.1; ‘The core purpose of adult care and support is to help people to achieve the outcomes that matter to them in their life’.
  - Duty requires LAs to ‘promote wellbeing when carrying out any of their care and support functions in respect of a person’
  - Doesn’t require any particular action to be taken

# Session 1 – Well-being (2)

- Guidance on well-being duty
  - 1.1 – ‘core purpose’
  - 1.2 – ‘guiding principle’
  - 1.6 – no hierarchy
  - 1.7 – ‘actively seeking improvements’
  - 1.9 – shift to ‘meeting needs’
  - 1.18 – independent living

# Session 1 – Other General Duties

- Preventing needs for care and support – section 2
- Promoting integration of care and support with health services – section 3
  - Guidance chapter 15
- Providing information and advice – section 4
  - Guidance chapter 3
- Co-operating generally – section 6
- Co-operating in specific cases – section 7

# Session 1 – Market shaping

- Promoting diversity and quality in provision of services – section 5
  - LAs must ‘promote the efficient and effective operation of a market in services for meeting care and support needs’
  - Outcome – that people with care and support needs will have
    - A variety of providers to choose from
    - A variety of high quality services to choose from
    - Sufficient information to make an informed decision

# Session 1 – Market shaping (2)

- Promoting diversity and quality in provision of services – section 5
  - Sub-section 2 – LAs must have regard to:
    - The need to ensure they are aware of current and likely future demand for such services and how providers might meet that demand
    - Enabling adults to participate in work, education or training
    - The importance of ensuring the sustainability of the market and fostering continued improvement in quality (inc workforce)

# Session 1 – Market shaping (3)

- Promoting diversity and quality in provision of services – section 5
  - Sub-section 4 – when commissioning, LAs must have regard to ‘the importance of promoting the well-being of [service users]’
- See Care Act guidance at Chapter 4, inc
  - 4.4 – LAs to review commissioning
  - 4.6-4.7 – definition of ‘market shaping’
  - 4.12 re outcomes and 4.21 re quality
  - 4.27 re ‘value for money’ (etc etc!)

# Session 1 – provider failure / market oversight

- Provider failure – section 48
  - Temporary duty to carry on providing care where a registered care provider is ‘unable to carry on that activity because of business failure’
- Market oversight – sections 53-57
  - CQC must assess financial sustainability of vulnerable registered care providers and take action / notify LAs
- See further Guidance at Chapter 5

# Session 1 – Transition

- Sections 58-66 – transition to adult care and support
  - Assessments of children – ss58-59
  - Assessments of children’s carers – ss60-61
  - Power to provide services to carers – s62
  - Assessments of young carers – ss63-64
  - Continuity of services – s66
- Guidance at chapter 16



# Session 1 – Transition (2)

- Assessments of children – ss58-59
  - Requirement for ‘child’s needs assessment’
  - Where LA satisfied child likely to have needs for care and support post 18 (no set age)
  - Must assess when ‘satisfied that it would be of significant benefit to the child to do so and if the consent condition is met’ (no consent required if abuse or neglect)
  - Detailed requirements in section 59

# Session 1 – Transition (3)

- Assessments of child’s carers – ss60-61
  - Requirement for ‘child’s carer’s assessment’
  - Where LA satisfied carer of child likely to have needs for care and support post 18 (no set age)
  - Must assess if ‘satisfied that it would be of significant benefit to the carer to do so and the carer consents
  - Detailed requirements in section 61
    - Must consider whether carer willing and able to continue providing care

# Session 1 – Transition (4)

- Power to provide services to child's carers – s62
  - LA can meet any needs it considers appropriate where satisfied carer has needs for support
  - Regulations can specify when this power should be exercised
    - Care and Support (Children's Carers) Regulations 2014
  - LA must have regard to any services being provided to carer under section 17 CA 1989

# Session 1 – Transition (5)

- Assessments of young carers – ss63-64
  - Requirement for ‘young carer’s assessment’
  - Where young carer likely to have needs for support after they turn 18
  - Must assess if satisfied that it would be of significant benefit to the young carer to do so and the young carer consents (unless risk of abuse or neglect)
  - Detailed requirements in section 64

# Session 1 – Transition (6)

- Continuity of services – s66
  - New section 17ZH inserted into Children Act 1989
    - Must continue to provide services post-18 until Care Act assessment(s) completed
  - New section 17ZI
    - Must continue to provide services where EHC Plan no longer maintained until Care Act assessment completed
  - New section 2A inserted into CSDPA 1970
    - Same as section 17ZH above (services must continue)

# Group Work 1 – Wellbeing

- *R (McDonald) v RB Kensington and Chelsea*

Mrs McDonald has a neurogenic bladder which means she needs to urinate frequently at night but is not incontinent. She is too frail to go to the toilet unaided.

Her LA withdrew her nighttime care on the basis she could instead wear incontinence pads. Mrs McDonald's judicial review claim failed

What difference (if any) would the well-being principle have made in her case?

# Session 2 – Assessment

- Sections 9-13 (section 9 – adults; section 10 – carers)
- Very low threshold for duty to assess
  - Appearance of need for (care and) support
- Focus on well-being and outcomes
- Carer's assessment includes whether willing to provide care (section 10(5)(b))

# Session 2 – Assessment (2)

- Assessment Regulations
  - Supported self-assessment – Reg 2
  - General requirements – Reg 3
  - Focus on family impact – Reg 4
  - Training and expertise for assessors – Reg 5
  - Deafblind expertise – Reg 6
  - Link to NHS Continuing Healthcare – Reg 7
- Much more detail than the current Community Care Assessment Directions 2004



# Session 2 – Assessment (3)

- Guidance on assessment – chapter 6
  - 6.2 – ‘critical intervention in its own right’
  - 6.3 – ‘appropriate and proportionate’ – formats
  - 6.9 – purpose of assessment
  - 6.13-19 – needs and carers assessments
  - 6.35 – more on ‘appropriate and proportionate’
  - 6.65 – whole family approach
  - 6.75 – integrated assessments
  - 6.84-90 – roles and training
  - 6.99 – delegation

# Session 2 - Eligibility

- National eligibility threshold – section 13
  - At present, adult eligibility criteria set locally – ‘critical’, ‘substantial’, ‘moderate’ or ‘low’
  - Section 13 – requires national threshold to be determined in regulations
  - Regulations intended to set threshold at roughly ‘substantial’ level – so no more ‘critical only’
  - Always open to LAs to provide more than minimum eligibility threshold

# Session 2 – Eligibility (2)

- Eligibility regulations – disabled people
  - Needs arise from or related to physical or mental impairment or illness
  - As a result adult unable to achieve two or more outcomes
  - As a consequence – significant impact on well-being
    - Unable – means in essence ‘finds difficult’...
    - Significant – more than minor or trivial?

# Session 2 – Eligibility (3)

- Eligibility regulations – carers
  - Needs arise as a consequence of providing necessary care (see guidance)
  - Effect of carers needs is:
    - Deterioration in carer’s physical or mental health (actual or risk); or
    - Unable to achieve one or more specified outcomes
  - Consequence – significant impact on carer’s well-being

# Session 2 – Eligibility (4)

- Guidance on eligibility – disabled people
  - Interpretation – 6.105
  - List at 6.107 – are (g) and (h) right?
  - 6.109 – cumulative effect
  - 6.110 – ‘significant’ not defined...
  - Case studies – John / Dave
  - 6.117 – fluctuating needs
  - 6.119 – carer support ignored

# Session 2 – Eligibility (5)

- Guidance on eligibility – carers
  - 6.124 – ‘necessary’ care – does not include support for needs adult capable of meeting themselves
  - 6.128 – example outcomes
  - 6.132 – no hierarchy
  - Case studies – Deirdre / Sam
- 6.138 – what happens next (for both disabled people and carers)

# Session 2 – Persons from Abroad

- Intended to mirror existing scheme
- Section 21 – exception for persons subject to immigration control
  - No power to meet needs for care and support which have arisen solely because the adult is destitute, or because of the physical effects, or anticipated physical effects, of being destitute.
  - Therefore requirement remains for ‘destitution plus’ to trigger social care duty.

# Session 2 – Prisoners

- Section 76 (and guidance chapter 17)
  - In its application to an adult who is detained in prison, this Part has effect as if references to being ordinarily resident in an area were references to being detained in prison in that area.
  - Therefore – prisoners with social care needs are the responsibility of the Local Authority in whose area the prison is located.
    - No power to make direct payments
    - No power to make safeguarding enquiries



# Group Work 2 – Eligibility

- Consider the Eligibility Criteria Regulations
- Take an (anonymised) borderline case of your own or consider:
  - John, aged 25, has Asperger syndrome. He has no close relatives and no proper friends. He drinks in a pub where other drinkers take advantage of him. He is struggling to hold down a job in a local factory and his personal hygiene seems to be deteriorating.
- Will your client / John have eligible needs?

# Session 3 – Care Planning

- Section 8 – ways in which needs can be met
- Section 18 – duty to meet needs (adult)
- Section 20 – duty to meet needs (carers)
- Section 24 – next steps duties:
  - prepare a care and support plan or support plan
  - tell the adult which (if any) needs may be met by direct payments, and
  - help the adult with deciding how to have the needs met.

# Session 3 – Care Planning (2)

- Section 25 – care / support planning
  - Specify needs
  - Specify which needs meet the eligibility criteria
  - Specify needs LA is going to meet and how it is going to meet them
  - Include personal budget
  - Includes advice and information on what can be done to meet or reduce needs and prevent the development of future needs
- Duty to take all reasonable steps to agree plan

# Session 3 – Care Planning (3)

- Planning – guidance chapter 10
  - 10.10 – meeting needs
  - 10.26 – carers
  - 10.27 – role of local authority’s finances
  - 10.33 – production of the plan
  - 10.36 – key required elements
  - 10.42 – can go beyond core elements
  - 10.43 – proportionate to meet needs
  - 10.59 – capacity issues

# Session 3 – Personal Budgets

- Section 26 – Personal Budgets
  - Statement which specifies
    - Cost to LA of meeting needs which it is required or decides to meet
    - Amount the adult must pay towards that cost
    - If there is a sum the LA must pay, that amount
  - May also specify other sums of public money available, for example
    - Housing
    - Health care
    - Welfare

# Session 3 – Personal Budgets (2)

- Personal budgets – guidance chapter 11
  - 11.2 – now the ‘norm’
  - 11.10 – amount
    - ‘the cost to the local authority of meeting the person’s needs’
  - 11.22 – calculating the amount
    - 11.23 – RASes
  - 11.25-28 – disputes re amount / DPs
  - 11.29 – use of PB
  - 11.36 - carers

# Session 3 – Direct Payments

- Sections 31-33 – Direct Payments
  - Adults with capacity – section 31
    - Duty if four conditions met
  - Adults without capacity – section 32
    - Duty if five conditions met
  - Regulations – section 33
    - Direct Payment Regulations
      - Conditions on use of DPs – Regulations 3-4
      - Process requirements – Regulation 5
      - Reviews – Regulation 7
      - Harmonisation with Health (not education) – Regulation 10

# Session 3 – Direct Payments (2)

- Direct Payments – guidance chapter 12
  - 12.2 – ‘preferred mechanism’
  - 12.10 – steps to follow
  - 12.18 – consideration of request
  - 12.24 – administering DPs
  - 12.35 – use including family members
    - New distinction ‘care’ and ‘admin’
  - 12.48 – becoming an employer



# Session 3 – Ordinary Residence

- Sections 39-41 – Establishing where a person lives
  - Section 39 – where a person’s ordinary residence is
    - People placed in accommodation – placing authority
    - Mental health after-care – LA with duty to provide
    - NHS accommodation – where resident before accommodation provided
  - Section 40 – disputes go to SoS
  - Section 41 – process for LA financial adjustments

# Session 3 – Ordinary Residence (2)

- Ordinary Residence (Specified Accommodation) Regulations
  - Specified accommodation is:
    - Care home accommodation
    - Shared Lives Scheme accommodation
    - Supported living accommodation
  - Shared lives - accommodation provided by a shared lives carer with shared lives agreement
  - Supported living - Specifically designed / adapted / intended accommodation...

# Session 3 – Ordinary Residence (3)

- Guidance at chapter 19
  - 19.12 onwards – how to determine OR
    - No definition – ordinary meaning
    - Questions of fact and degree – time, intention, continuity
    - Place the person has voluntarily adopted for settled purpose, whether short or long term
  - 19.25 onwards – placements in other areas
    - Person placed out of area deemed to be ordinarily resident in placing authority
    - Where person moves of own volition, ordinary residence is in new authority.

# Session 3 – Portability

- Sections 37-38 – continuity of care and support (guidance chapter 20)
  - Section 37 – notification and assessment
    - LA 1 must notify LA 2 of intention to move
    - LA 2 must notify LA 1 that intention accepted as genuine
    - LA 1 must provide LA 2 with care and support plan etc
    - LA 2 must assess needs having regard to previous plan, explain difference (and then provide services)

# Session 3 – Portability (2)

- Sections 37-38 – continuity of care and support
  - Section 38 – where assessment not complete
    - If LA 2 fails to complete assessment or other steps by intended day of the move, it must continue to meet needs met by LA 1 and retain care account on same basis
    - Duty subsists until LA 2 has carried out assessment and taken other steps required in the case
    - LA 2 must involve the adult, any carer and anyone else asked and take reasonable steps to seek agreement

# Group Work 3 – Care and Support Plans

- Besides the mandatory elements, what would the group want to see in a good care and support plan for a 20 year old man with autism and learning disabilities who wants to leave his family home to live in his local community?

# Session 4 – Charging

- Sections 14-17 – charging and assessing finances
  - Section 14 – power to charge for meeting needs under sections 18-20
    - Limited by reference to minimum income requirement
  - Section 15 – cap on care costs
    - LAs may not charge if total costs accrued exceeds cap
  - Section 16 – cap to be adjusted annually
  - Section 17 – assessment of financial resources
    - See further Charging Regulations

# Session 4 – Charging (2)

- Section 29 – Care Account
  - Where an adult has needs for care and support which meet the eligibility criteria, the LA must
    - keep an up-to-date record of the adult's accrued costs (a “care account”), and
    - once those costs exceed the cap on care costs, must inform the adult.
  - Account statements to be provided at specified intervals



# Session 4 – Charging (3)

- Charging – guidance chapter 8 (Annexes A-F)
  - Overarching principle 8.2
  - 8.4 – discretion to choose whether to charge
  - 8.11 – capital limits
    - 8.12 – currently £23,250
  - 8.15 – financial assessment
  - 8.22 – ‘light touch’ assessment
  - 8.42 – ‘Minimum Income Guarantee’
    - Income support plus 25%
  - 8.49 – carers – ‘false economy’ 8.50

# Session 4 - Advocacy

- Sections 67-68
  - Section 67 – advocates must be involved in assessment and care planning where
    - Individual has substantial difficulty in one or more areas
    - No appropriate person to represent and support
  - Role of advocate – to ‘represent and support’ for purpose of ‘facilitating...involvement’
  - Section 68 – safeguarding enquiries and reviews
  - Advocacy Regulations (No 2) – requirements re qualifications of advocates and process

# Session 4 – Advocacy (2)

- Independent Advocacy Support Regulations
  - Reg 2 – requirements to be an IA
    - Reg 2(3) – definition of ‘independent’
  - Reg 3 – elements of ‘substantial difficulty’
  - Reg 4 – where exemption from duty to appoint IA does not apply
    - NHS accommodation
    - Dispute between LA and alternative rep
  - Reg 5 – duties on IAs
  - Reg 6 – duties LAs owe to IAs

# Session 4 – Advocacy (3)

- Advocacy – guidance chapter 14
  - 7.6 – link to duty to involve
  - 7.8 – judgment on ‘substantial difficulty’
  - 7.9 – same person can be Care Act advocate and IMCA (if meet both requirements)
  - 7.18 – duty to appoint IA may arise at any point
  - 7.34 – wish not to be supported by alternative individual should be respected

# Session 4 - Safeguarding

- Safeguarding
  - Sections 42-47 – first statutory provisions
  - Section 42 – duty to make enquiries ‘to decide whether any action should be taken in the adult's case’ (but no clear duty to act) where reasonable cause to suspect:
    - Needs for care and support
    - Experiencing or at risk of abuse or neglect
    - As a result unable to protect himself
  - See Guidance at 6.56 / 14.91 re LA response

# Session 4 – Safeguarding (2)

- Safeguarding
  - Sections 43-45 – Safeguarding Adults Board
  - Section 43 – duty on LA to establish SAB
    - Objective – to help and protect adults in its area re actual or potential abuse / neglect
    - Must co-ordinate and ensure effectiveness of members
    - See Schedule 2 for membership, funding etc
  - Section 44 – safeguarding adults reviews
    - Death or serious abuse or neglect
    - Reasonable cause for concern re SAB or members' role

# Session 4 – Safeguarding (3)

- Safeguarding – guidance chapter 14
  - 14.1 – replaces No Secrets
  - 14.7 – what it is and why it matters
  - 14.16 – definitions abuse / neglect
  - 14.31 – reporting and responding
  - 14.40 – adult safeguarding procedures
  - 14.63 – LA duties re enquiries
  - 14.77 – individual cases
  - 14.88 – what happens next?
  - 14.104 onwards – SABs / SARs

# Group Work 4 – Safeguarding

- There is concern that an elderly woman with dementia is being financially abused by her grandson. What should the local authority do:
  1. To investigate the issue
  2. If investigations show that abuse is taking place



# Conclusions

- Law that now reflects good social work practice
- Some elements come with significant resource implications – rights to services for carers, advocacy
- Other areas require new ways of thinking – well-being principle
- Real opportunity despite context of cuts

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