



Care Act 2014

# Understanding The Care Act

Key duties and top tips

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# Understanding the Care Act

## **Look at:**

- Independent living and the Care Act
- Assessments
- Eligible needs
- Support planning
- Dealing with problems

# What is the Care Act 2014

The Care Act is made up of:

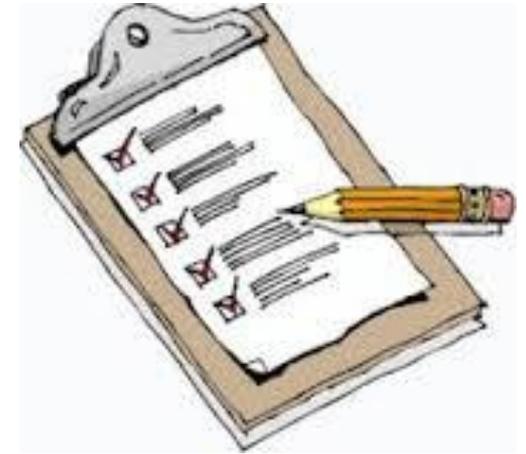
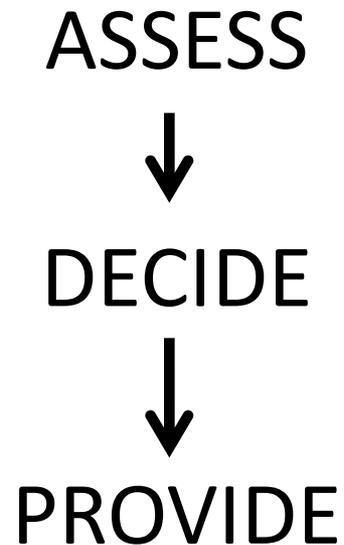
- The Care Act itself – a law of Parliament
- Regulations – different sets of rules
- Statutory Guidance - more detail about how to follow what the Act and the rules say



# What is the Care Act 2014

Same process

Local authorities still have to:



# The Care Act and independent living

- No right to independent living
- Under the Care Act providing social care support services is still understood not as a 'right' but as 'welfare entitlement'
- BUT overall the ideas behind the Care Act and the way it is set out is about promoting independent living



# The Well-being principle

## New duty in the Care Act

In everything a local authority does under the Act, they must promote the well-being of the individual.

What does well-being mean?

- personal dignity and treating you with respect
- physical and mental health and emotional well-being
- protection from abuse and neglect



# The Well-being principle

- control over day-to-day life including care and support and the way in which it is provided
- participation in work, education, training or recreation
- social and economic well-being
- domestic, family and personal relationships
- suitability of living accommodation
- contribution to society



# The Well-being principle

Local Authorities must:

- Begin with the idea that the person knows themselves best;
- Think about the person's views, wishes, feelings and beliefs;
- Put things in place to stop the person's needs getting higher;



# The Well-being principle

Local Authorities must:

- Make sure the person takes part as far as possible in decisions about their support and has the information and help they need to do so;
- Think about both the well-being of the person and the well-being of carers;
- Protect people from abuse and neglect





# United Nations Convention on the Rights of Persons with Disabilities (UNCRPD)

## Article 19 – the right to independent living

Art 19: equal right of all disabled people to live in the community, with choices equal to others, including:

- opportunity to choose their place of residence and where and with whom they live on an equal basis with others, not obliged to live in a particular living arrangement;
- access to a range of support services to support living and inclusion in the community, and prevent isolation or segregation from the community;
- community services and facilities for the general population are available on an equal basis for disabled people and are responsive to their needs.

# Well-being and independent living – statutory guidance

Although independent living isn't mentioned in Section 1 of the Care Act (on the well-being principle), the Care Act Statutory Guidance states (para. 1.19):

‘The wellbeing principle is intended to cover the key components of independent living, as expressed in the UN Convention on the Rights of Persons with Disabilities (in particular, Article 19 of the Convention). Supporting people to live as independently as possible, for as long as possible, is a guiding principle of the Care Act.’



# Assessments

- It should be easy to get an assessment (or a re-assessment)
- They shouldn't refuse to assess because of whether or not you would have to pay for care
- It should normally be a face-to-face assessment – not just a self-assessment questionnaire
- LA's must provide in advance, and in an accessible format, the list of questions to be covered in the assessment.



# Assessments

A duty (under s67) to provide **independent advocacy support** where the authority considers that:-

(1) you would have 'substantial difficulty' in being involved in your assessment, the preparation of your care and support plan or other processes about care provision (including care reviews, safeguarding enquiries and safeguarding adult reviews; and

(2) there is no one appropriate available to support you with the process.



# Assessments

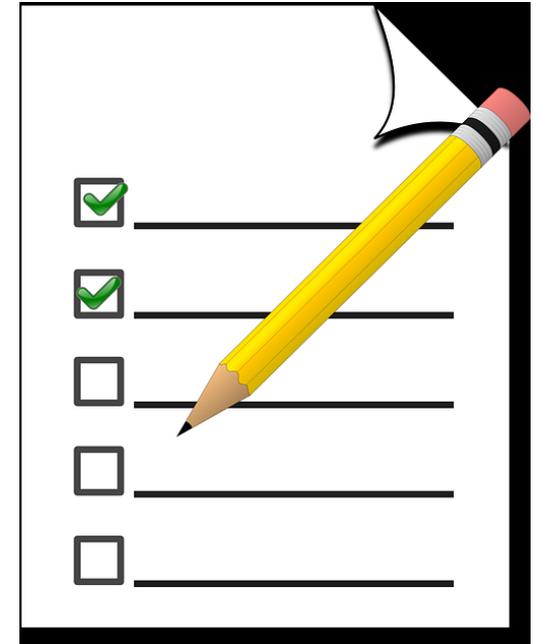
- If social services think you may need help from Health or housing or someone else they must make sure this happens and work jointly with them
- The assessor should speak to carers, family or others who can help give information about your needs (if you agree to this)
- They should also give you a chance to speak to them separately from your carers or family if you want to, and the same for your carers if they want to, about their own needs



# Assessments

In the assessment the council has to:

- Speak to you
- Speak to a carer **if you agree**
- Think about how your needs impact on your well-being and what you want to achieve in day-to-day life (new in the Care Act)
- Think about what services, information, advice or other things in the community could benefit you (new in the Care Act)
- Try and agree with you (and your carer if needed) about what services will meet your needs
- Tell you about the amount of charge you may have to pay for any services



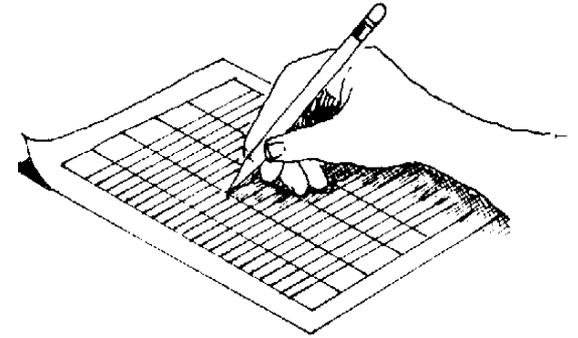
# Assessments - tips

- Make sure you clearly flag up all your needs - otherwise they will not be funded. Include the lesser needs as well as the more important ones because they can add up and need to be looked at as a whole.
- Explain how your needs affect your well-being
- Make sure you emphasise the worst risks that might happen if your needs aren't met – don't just think about how you are on a good day.



# Assessments – the record

- It's VITAL that everything you discuss in the assessment is recorded – get a copy and check it. Ask for missing details to be added.
- After the assessment there will be a decision about your eligible needs and what support is to be provided and this needs to be made clear on the record too
- With personal budgets/direct payments, it is even more important to get a clear record of everything that has been discussed and agreed



# Eligibility

- The assessment should identify all your needs: but LA's may only provide support to meet your **“eligible”** needs – needs they have a duty to meet
- The Care Act introduces a new single, national eligibility framework for all Local Authorities – before there were differences between areas



# Eligibility

To be eligible for support, you must meet three requirements:

1. Your needs must be the result of a physical or mental impairment or illness
2. As a result you must be unable to achieve two or more of the outcomes set out in the eligibility criteria, and
3. As a consequence there is likely to be a significant impact on your well-being

The Care Act Guidance says: 'Significant impact' means an important effect on your daily life, independence and well-being



# Eligibility

## Eligibility criteria 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 your home safely;
- (f) maintaining a habitable home environment;



# Eligibility

## Eligibility criteria outcomes:

- (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;
- (j) carrying out any caring responsibilities you have for a child.



# Eligibility

- ‘Unable to achieve’ an outcome includes being able to achieve it but:
  - only with assistance, or
  - doing so (without assistance) takes much longer than for someone else or
  - doing so (without assistance) causes a lot of pain, distress or anxiety, or
  - doing so (without assistance) might put you or someone else in danger.
- If you have fluctuating needs (needs that change on different days), the local authority must look at them over a long enough period to think about them properly



# Eligibility and help from carers

- NB the decision about your eligible needs must be 'carer-blind'
- This means any help you are getting or could get from carers, whether paid or unpaid, must be ignored when determining whether your needs are eligible
- The assessment should record if there is unpaid help that family or other carers are willing to give, **and you agree with this**
- This can be taken into account when the authority decide what support they will provide
- But not when deciding what your eligible needs are!



# Support planning – how your eligible needs will be met

This is where you have the chance to exercise choice and control about how your needs can best be met - **but**

- the local authority can take a strict approach to only meeting eligible needs, and
- in choosing between different practical options for meeting your needs, it may be able to decide to offer an option that is cheaper even though it is not your preferred option.



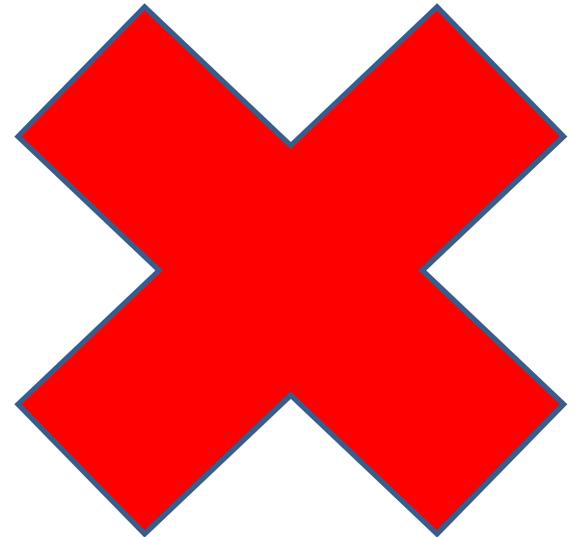
# Support planning – challenging cheapest options

- The authority may ...include the cost as a relevant factor in deciding between suitable alternative options for meeting needs. This does not mean choosing the cheapest option; but the one which delivers the outcomes desired for the **best value.**' Paragraph 10.27 of the Care Act
- The concept of **well-being** is all-important – link your needs and your preferred support back to the specific elements of well-being listed and show how your preferred support best delivers your well-being .
- Remember the assumption that you are best placed to judge your well-being



# Support planning –what should you get?

- Local authorities can't have 'blanket policies'
- They can't impose an upper limit on help
- If nothing suitable is available locally for you, ask for evidence that your council is taking steps to arrange or commission a new service
- Your support plan must be in writing and address all the 'how, who, what and when' and be clear



# Dealing with problems

- If you believe that the Council has acted wrongly, you should ask them clearly in writing to sort things out and explain why
- Think about how quickly it needs to be dealt with: if it is urgent, explain why and say clearly when you expect an answer
- Under the Care Act there will be a new appeals process about assessments and care decisions
- People will be entitled to have help from an independent advocate if they need it



# Dealing with problems

- If necessary make a formal complaint. Ask for a copy of the Council complaints procedure and make sure you follow it
- A template complaint letter is available from:  
[www.lukeclements.co.uk/resources/index.html](http://www.lukeclements.co.uk/resources/index.html) (click on 'precedent complaint letter')
- If the situation is serious, urgent or you are not getting anywhere with the other options, you can seek legal advice from a community care solicitor
- There are deadlines for legal action so if in doubt get advice early



# Dealing with problems

## Resources:

- See the ILF FAQs guide, available on these websites:
  - [www.disabilitysheffield.org.uk/fact-information-sheets](http://www.disabilitysheffield.org.uk/fact-information-sheets)
  - [www.inclusionlondon.co.uk/ILF](http://www.inclusionlondon.co.uk/ILF)
  - <http://ilfaction.net/info-guidance/>
- The FAQs guide also includes a list of other useful resources on community care issues generally and on specific aspects, e.g. charging and claiming disability related expenditure (DRE)
- Steve Broach/Monckton Chambers powerpoint slides on the Care Act, available from Inclusion London (0207 237 3181) or at [www.ilfaction.net](http://www.ilfaction.net)
- Lots of good resources on Luke Clements's website: [www.lukeclements.co.uk](http://www.lukeclements.co.uk)

