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Transitions

Social care: preparing young people for transition into adult services

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Programme

- Preliminary – the new Care Act 2014 transition duties
- What a Care Act assessment should involve.
- Care Act eligibility criteria.
- Charging & young adult with capital (eg from a personal injury claim: can they expect support from ASC or do they have to use the money to provide day to day care?)
- Lasting Powers of Attorney and Court of Protection deputies distinguished.

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Transitions pre-Care Act law

Disabled child
Parent
Sibling

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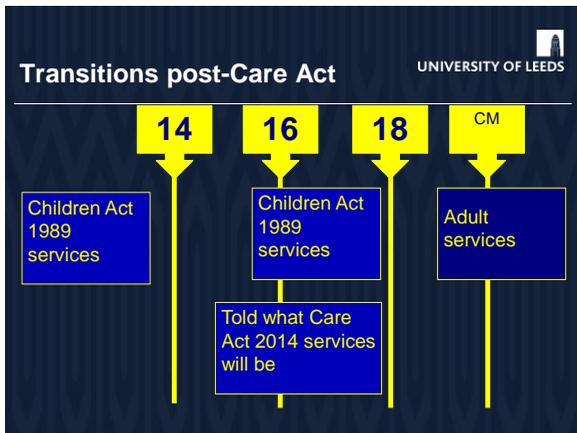
18

Children Act 1989
services

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Care Act ss 58 - 59

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General formula

Where it appears to a LA that:

1. it is 'likely' that [person] will have care & support needs after transition
2. it to be of significant benefit to be assessed;

Must assess (with consent / BI assessment)

LA must give reasons if it refuses to assess

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Care Act ss 58 - 59

General formula

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Must assess (with consent / BI assessment)
LA must give reasons if it refuses to assess

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Transitions at 18

CA 1989 s17ZH enables the Children Services & Adult Services to decide the best time to transfer when is best transfer their respective responsibilities.

SEND Code states (para 8.67):

Under no circumstances should young people find themselves suddenly without support and care as they make the transition to adult services. Very few moves from children's to adult services will or should take place on the day of someone's 18th birthday.

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Transitions at 18

CA 1989 s17ZH ~ LAs can continue to provide services under CA 1989 s17 and/or CSDPA 1970 s2 even though the young person has reached the age of 18.

Statutory Guidance (para 16.67)

families must not faced with a gap in provision of support on the 18th birthday - if by that date the necessary support not in place then the existing services must be continued until the 'relevant steps have been taken'

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Care Act 2014 Assessments and Eligibility Criteria

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Statutory Guidance

Statutory Guidance ~ subject to routine revisions

Status of Guidance

LAs must follow guidance unless they can demonstrate sound legal reasons for not doing so'. (s78 Care 2014)

Annexes

Annex B, C, D, E Charging

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Well-being duty s1(2)

“Well-being” relates to:

- (a) personal dignity
- (b) physical / mental health / emotional well-being;
- (c) protection from abuse and neglect;
- (d) control over day-to-day life inc nature of care provided;
- (e) participation in work, education, training or recreation;
- (f) social and economic well-being;
- (g) domestic, family and personal relationships;
- (h) suitability of living accommodation;
- (i) the adult’s contribution to society.

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Well-being duty s1(3)

LA must have regard to—

- (a) assumption that the ‘individual’ is best placed to judge well-being;
- (b) individual’s views, wishes and feelings;
- ...
- (d) individual participating (with support if needs be) as fully as possible in decisions about them;

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Independent living

The wellbeing principle is intended to cover the key components of independent living, as expressed in the UN Convention on the Rights of People 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

Guidance (para 1.19)

- Burnip v. Birmingham City Council* (2012)
- R (Bracking and others) v. SS DWP* (2013)
- Mathieson v Sec State Work & Pensions* (2015)
- Hurley v Sec State Work & Pensions* (2015)

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Eligibility criteria and assessments

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An adult's needs meet the eligibility criteria if—

- (a) the needs arise from or are related to a physical or mental impairment or illness;
- (b) as a result of the adult's needs the adult is unable to achieve **two or more** outcomes; and
- (c) as a consequence there is, or is likely to be, a **significant** impact on the adult's well-being.

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unable to achieve an outcome if —

- (a) is unable to achieve it without assistance;
- (b) is able to achieve it without assistance but doing so causes the adult significant pain, distress or anxiety;
- (c) is able to achieve it without assistance but doing so endangers or is likely to endanger the health or safety of the adult, or of others; or
- (d) is able to achieve it without assistance but takes significantly longer than would normally be expected.

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Unable to achieve 2 or more of:

- (a) managing and maintaining nutrition;
- (b) maintaining personal hygiene;
- (c) managing toilet needs;
- (d) being appropriately clothed;
- (e) being able to make use of the adult's home safely;
- (f) maintaining a habitable home environment;
- (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; and
- (j) carrying out caring responsibilities the adult has for a child.

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Guidance para 6.106



managing and maintaining nutrition.

whether the adult has access to food and drink to maintain nutrition, and that the adult is able to prepare and consume the food and drink.

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Managing & maintaining nutrition



A blind person.

She said she needed help to (among other things) check the contents of her fridge; read cooking instructions; and have an escort to help her on occasional shop trips.

In the council's opinion although the need relates to eating / preparing meals this could be addressed by use of long-life foods, her freezer, and ready meals.

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Well-being duty

relates to:

- (a) personal dignity
- (b) physical /MH /emotional;
- (c) protect abuse /neglect;
- (d) control day-to-day life;
- (e) work, education, training;
- (f) social & economic;
- (g) personal relationships;
- (h) suitable accommodation;
- (i) contribution to society.

regard to—

- (a) individual is best placed;
- (b) views, wishes and feelings;
- (c) all the circumstances;
- (d) participate in decisions
- (e) a balance between individual's and carers;
- (f) Protect abuse/ neglect;
- (g) minimum restrictions.

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Managing & maintaining nutrition

Ombudsman

Maladministration for a LA to fail to recognise that 'fresh food is essential to meet nutritional needs' and that 'consumption of fresh food once it has started to perish carries a significant health risk'

Complaint ~ Hammersmith & Fulham 21 July 2016.

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Guidance para 6.106

being appropriately clothed.

LAs should consider the adult's ability to dress themselves and to be appropriately dressed, for instance in relation to the weather to maintain their health.

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Getting dressed

A blind person.

She said she needed help to (among other things) sort clothes, so she did not wear stained or inappropriate clothing

In the council's opinion although the need related to dressing this was not a dressing outcome that was sufficiently significant for it to be eligible.

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Well-being duty

relates to:

- (a) personal dignity
- (b) physical /MH /emotional;
- (c) protect abuse /neglect;
- (d) control day-to-day life;
- (e) work, education, training;
- (f) social & economic;
- (g) personal relationships;
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regard to—

- (a) individual is best placed;
- (b) views, wishes and feelings;
- (c) all the circumstances;
- (d) participate in decisions
- (e) a balance between individual's and carers;
- (f) Protect abuse/ neglect;
- (g) minimum restrictions.

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Getting dressed

Ombudsman

Maladministration for a LA to fail to recognise the importance to an adult's personal dignity of wearing clean, presentable and appropriate clothes

Complaint ~ Hammersmith & Fulham 21 July 2016.

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Guidance para 6.106

maintaining a habitable home environment.

- whether the condition of the adult's home is sufficiently clean and maintained to be safe. A habitable home is safe and has essential amenities. An adult may require support to sustain their occupancy of the home & to amenities, such as water, electricity, gas.

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Housework / nutrition

Complainant receiving a Direct Payment to cover her eligible needs;

On review:

Although no change her DPs reduced by 7 hours pw

Reduction for: (a) 'nutrition' need and (b) 'maintaining habitable home' need.

In both cases this justified by saying that her DLA should be used to pay for these.

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Housework / nutrition

Ombudsman noted:

The Care Act 2014 places a duty on councils to: assess a need of care and support.

decide what the person's 'eligible needs' are – ie:

1. needs result of a physical or a mental condition.
2. because of those needs, they cannot achieve two or more of 10 specified outcomes;
3. this has a significant impact on their wellbeing.

Where eligible needs are identified these must be met

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Housework / nutrition

Ombudsman noted:

I can see nothing in the Care Act 2014 or the statutory guidance which allows the Council to require a person to use their benefits this way.

Haringey LBC 16 012 715 12 June 2017 (para 36)

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Habitable home

Ombudsman decision :

An investigation found the council routinely telling people it would not fund support to maintain a habitable home, and that they should find the money themselves

In this case the council appears to have decided some needs are more important than others. This is contrary to the Care Act, which places equal importance on all eligible needs – it is designed to ensure councils do not pick and choose which they meet.

Press Release – Hertfordshire CC 19000200 7 September 2020

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Carers Assessments s10

Basic principles

whether the carer able / willing to provide and 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.

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Willing & able

Local Government Ombudsman (2016)

Authorities must not assume a carer is willing or able to provide any care – including additional care arising from a reduction in the care package.

It will be maladministration for a reduction to occur without assessing the carer and explicitly clarifying (and recording) whether she/he is 'able and willing' to provide the additional care.

Complaint London Borough of Bromley 7/9/16

LA Local authority reduced adult in needs support without proper consideration of the impact on his carer.

Complaint Essex CC 30/11/16

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Willing & able

A 2018 ombudsman complaint concerned a disabled person who had a mobility car. Although he was unable to drive it, the council decided that his parents should drive it – taking him to and from his day centre.

- The ombudsman held that it was maladministration for the council to have failed to consider the impact that this would have on their health, their loss of respite care and whether they were willing and able to do this.

Nottingham City Council (18 004 245) 2018

See also Wiltshire County Council (16015946) 2018

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Care Act 2014 Care & Support planning

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Care & support plans

- **Key components of care & supports plan (para 10.36):**
- the needs identified by the assessment;
- the extent to which the needs meet the eligibility criteria;
- how the LA is going to meet the needs;
- the desired outcomes of the adult 'in need';
- the outcomes the carer wishes to achieve (inc work, education and recreation);
- the personal budget ...;
- information / advice on what can be done to reduce the needs / prevent or delay development of needs ;
- where a direct payment ... , the needs to be met via the DP, the amount and frequency of the payments.

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Care & support plans

A 2016 ombudsman report concerned a young man with Down's Syndrome assessed as having substantial needs including an outcomes to form 'peer group relationships' and prevent isolation.

- A suitable supported housing placement identified which had a resident of a similar age.
- LA withdrew this having found a cheaper placement but this was occupied by older people.
- In finding maladministration the ombudsman held that Care plans 'should not only cover how a person's physical needs will be met. They should also address the person's social needs and emotional wellbeing.'

Complaint against Barking & Dagenham LBC 8/6/2016.

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Care & support plans

Local Government Ombudsman

- Care and support plans should include effective contingency plans.
- The fact that these may be difficult to predetermine in certain cases does not mean that they are absolved from this responsibility

Complaint against Kent CC 20/10/2016

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Care & support plans

The duty to meet the needs is 'non resource-dependent'.
ie if the assessment identifies a need for (say) 10 hours of personal care services a week – then this need must be met precisely and it is not something that the LA can 'trim' because it has to make cutbacks due to resource shortages.

R v Islington LBC ex p Rixon (1997)

There can be no 'maximum' packages

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Personal budgets

Guidance:

- The PB must always be an amount sufficient to meet the person's care and support needs
- Must be broken down into the amount the person pays and the amount the LA will pay.

s26 creates a duty to provide a 'transparent budget in a care and support plan' and a failure to do so will be a breach of public law

CP v. NE Lincolnshire Council [2018]

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Charging

Power to charge – not a duty (section 14) ;

- Councils cannot charge more than 'reasonably practicable' for the person to pay (SG para 8.2)
- Wicked detail in the Annexes to Statutory Guidance
- LGO Annual Report 2018 - 2019
- 66% of cases now finding faults in the system – many 'appear to be driven by attempts to ration scarce resources' ... 'more complaints about charging ... and found fault in a larger proportion' of those investigated.

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Charging & DRE

Annex C para 40 of SG includes:

- privately arranged care services (eg respite care), the additional costs of special dietary needs due to illness or disability; above average heating costs and special clothing or footwear etc.

Ombudsman cases have included:

- telephone bills, hair braiding, live in carers food costs, holidays, transport costs, pet care costs etc.

The ombudsman has stressed the need for councils to be 'flexible'.

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Capital / income disregards

A person is deemed to be a 'self funder' if their have capital above £23,250.

A number of 'capital' disregards – eg

Main residence

- if the person is living in it (even if temporarily absent)
- if permanently absent – but it is occupied by certain relatives (eg if they are under 18, over 60 or incapacitated);

Personal injury trusts (SG, Annex B para 33(h)–(l))

Income from a personal injury trust fund – also in general ignored - Annex C (Treatment of Income) para 29(q)

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Court of Protection

If a person lacks the necessary 'mental capacity' to make a particular decision, then it may be necessary to obtain formal legal authority for someone else to be able to make that decision for them.

Note always necessary - eg:

- 'Section 5 powers' (ordinary day to day decisions);
- Appointeeships (social security benefits)

Where formal authority is needed, then it will be either a:

- Lasting Power of Attorney; or
- A Court of Protection Deputy

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Lasting powers of Attorney

Financial LPA

Personal Welfare LPA

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Financial LPA's

Buying or selling property
Opening & operating bank a/c etc
Claiming & receiving benefits etc.
Dealing with tax affairs
Investing savings
Making limited gifts
Paying residential care fees etc.

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Personal Welfare LPA's

Where the donor should live;
day-to-day care, decisions eg diet and dress
Contact decisions
Consenting & refusing medical treatment
Arrangements for medical treatment
Community care assessments
Agreeing to social, education etc activities
Rights to access to personal information
Complaints about care or treatment.

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Lasting Powers of Attorney

Forms can be downloaded from the Office of the Public Guardian

- Separate forms must be completed to create Financial and Personal Welfare LPAs;
- Financial LPAs can be used before loss of capacity;
- Personal welfare LPAs only after loss of capacity;
- Procedure for creation;
- Procedure for registration.

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Lasting Powers of Attorney

A person can create an LPA (ie appoint someone to make decisions on their behalf) even if they have already lack the capacity to make the decision themselves;

Provided they understand that what they are doing – ie giving someone else they trust to makes these decisions for them and that the this cannot be withdrawn (unless they recover their capacity to make decisions of this kind) ey laost the capacity to make Forms can be downloaded from the Office of the Public Guardian

- Separate forms must be completed to create Financial and Personal Welfare LPAs;

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Lasting Powers of Attorney

A person can create an LPA (ie appoint someone to make decisions on their behalf) even if they have already lack the capacity to make the decision themselves;

Provided they understand that what they are doing – ie that the LPA will in general:

- have complete authority over their affairs;
- be able to do anything with their property that they could have done;
- will continue so long as they lack capacity;
- be irrevocable (except by the court).

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Court of Protection 'deputies

- Where a formal power is required, and the disabled person lacks the necessary mental capacity to make an LPA (and they have not already made one);
- Forms downloadable from Office of the Public Guardian;
- Deputies' powers limited to what is strictly necessary;
- Potentially very wide powers however, normally limited to property and financial affairs.

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Court of Protection 'deputies

- Deputies (like LPAs) must always act in the person's 'best interests' and to do this they must consult with a range of individuals (s4 MCA 2005);
- Having 'personal welfare' decision making power may not be legally necessary in many cases as LAs / the NHS etc must also always act in a person's 'best interests' and consult with a range of individuals – eg families etc
- Some families state that there are 'status' benefits to having such a power – ie "credentialism" effects

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