

The Care Act - 18 months on...



WELCOME

This issue looks at how the Care Act 2014 is taking shape, 18 months after it came into force and considers whether its introduction has - in the words of the Department of Health - really been a 'change for the better'.

We also provide a news roundup and tips on how you can navigate the maze of health and social care legislation.



To sign up to receive our free legal updates and newsletter, please email esmeh@moore-tibbits.co.uk

PROCEED WITH CARE...



The introduction of the Care Act in April 2015 consolidated the muddle of social care legislation into a single law for the first time with the aim of making the system easier to understand, easier to navigate and more transparent.

It also marked a significant reform of social care legislation and was heralded by Norman Lamb in May 2014 as 'changing the way we care for people' by (amongst other things) placing an individual's "wellbeing" at the centre of a local authority's responsibility to meet needs.

The Act itself and the supporting Regulations and Statutory Guidance make for positive reading, but 18 months on this does not seem to have translated into practical benefits for service users and carers.

Recent local cases have highlighted a range of problems including delays in needs assessments, disputes over eligibility, lack of choice in care provision and a lack of information about charging and financial issues generally including 'top ups' and property disregards.

The local picture is reflected in growing concerns nationally that the social care system is under resourced and at breaking point.

The Care Act has the potential to place individuals and their carers at the heart of the assessment and care planning process. However these financial constraints appear to be leading to ever narrowing interpretations of the law, as local authorities struggle to manage severe cuts. It is more important than ever that you know your rights, responsibilities and the rules surrounding care. If you are unsure, please contact our team for advice.

Funded Nursing Contribution Increase

Hopefully you will be aware that the NHS Funded Nursing Contribution has been increased from £112 to £156.25 per week, with effect from 1st April 2016.

Nursing homes can expect to receive backdated payments to cover the increase and we would advise those paying for care privately to check that amounts have been altered on their own care contracts.

Be prepared! When signing a nursing care home contract, make sure you understand how the Funded Nursing Contribution has been applied to your charges.



Mind the Gap?

Always a fascinating read, the recent Age UK Briefing The Health and Care of Older People in England 2015:

<http://www.ageuk.org.uk/professional-resources-home/research/reports/care-and-support/the-health-and-care-of-older-people-in-england-2015/> highlights worrying gaps and the significant drop in people accessing support.



In the Courts...

Oxfordshire Council [June 2016]
A disabled man has been given permission (by the High Court) to bring a legal challenge against the local authority's decision to reduce his care package.

This is the first case linked to "an alleged failure to meet the Care Act's wellbeing principle".

London Borough of Haringey [2015]
criticised for not appointing an advocate to work with an asylum seeker, in breach of its duties under the Care Act.

Not a Care Act case but one with far reaching implications:

Four councils (Nottinghamshire, Richmond, Shropshire and Liverpool) have lodged a judicial review against the (then) health secretary arguing that lack of funding for DOLS cases is creating "an unacceptable risk of illegality" (McNicoll, 7.06.16 on communitycare.co.uk) - basically that councils would be breaking the law by not meeting their statutory duties because of inadequate funding. This could have implications for other failure to meet duties including those duties imposed under the Care Act - **Watch this space!**

Local Government Ombudsman - Adult social care complaints across the region (2015-16)	
Coventry City Council	12
Herefordshire Council	10
Leicestershire County Council	22
Oxfordshire County Council	22
Solihull Metropolitan Borough Council	9
Warwickshire County Council	33
Worcestershire County Council	20

More on the funding squeeze

Further evidence of the funding pressures affecting care providers was highlighted in the recent announcement by Housing and Care 21 that it will be withdrawing from providing home care services. According to the Association of Directors of Adult Social Services (ADASS) the first part of 2016 saw a number of home care providers withdrawing from contracts or ceasing trading altogether.

A recent report by The Kings Fund and Nuffield Trust ([available at www.kingsfund.org.uk/publications/social-care-older-people](http://www.kingsfund.org.uk/publications/social-care-older-people)) paints a similarly bleak picture for social care, leading Ray James (ADASS Immediate Past Present) to comment:

“We are now at tipping point where social care is in jeopardy and unless the Government addresses the chronic underfunding of the sector, there will be worrying consequences for the NHS and most importantly, older and disabled people, their families and carers”.

Book a talk or training session:

We offer:

- Free bespoke talks
- Staff training
- Free resident group seminars
- Consultancy

To book training or a talk, please contact Esme Hill: esmeh@moore-tibbits.co.uk

Check out...

the recent report from Carers UK about the state of caring in 2016 (available at www.carersuk.org/for-professionals/policy/policy-library/state-of-caring-2016) Like many other recent publications, it highlights the ongoing negative impact of “austerity cuts”.

This is the largest survey of carers in the UK and will paint a familiar picture to those of you who are or provide support to carers.

For carers, the new provisions under the Care Act and indeed, the spirit of the Act, with its emphasis on “wellbeing” and prevention seems to have been lost in the myriad of cuts to services, delays in assessments and problems with hospital discharge.

The report is an illuminating read, particularly about carers assessments. Whilst there should be an opportunity to access support, information and advice:

- **50%** of survey participants have asked for or been offered an assessment
- **29%** of carers in England have waited more than 6 months for the assessment or are still waiting
- When carers get an assessment they often feel it is of no material benefit

“Many carers felt that the money or services is not there for the local authority to provide them with the support their assessment found them to need so the assessment ended up feeling like a tick box exercise”.

SOCIAL CARE STATISTICS

The first statistics concerning social care since the introduction of the Care Act have been released. Headline figures...1,811,000 requests for support from new clients:

28% 18-64 72% 65+

873,000

people receiving long term support across England during the year

524,000

resulted in universal services/signposting

515,000

no identified need

WHEN YOU AIN'T GOT NO MONEY, YOU GOTTA GET AN ATTITUDE

(Richard Pryor)

Over the past ten years we have seen the introduction of laws, including the Mental Capacity Act 2005 and the Care Act 2014, that have the potential to revolutionise people's lives. They mark a shift away from the paternal 'doing for' approach of old to enabling and empowering people. But can these laws work in the current "cuts" climate?

The very first section of the Care Act highlights a local authority's general duty to promote an individual's wellbeing, which includes 'control by the individual over day-to-day life (including over care and support...and the way it is provided)..'

So why are complaints about social care increasing?

Why are 25% fewer older people receiving support from their local authority?

The simple answer is a lack of public funding following years of financial cutbacks. But these cuts have opened a great stonking gap between what positive and proactive legislation says should happen (and even the wishy washy legislation for that matter - yes, National Framework for NHS continuing healthcare we are looking at you) and what actually happens in current service provision.

Moore & Tibbits
Solicitors

 a member of
QualitySolicitors

Take George, for example...

George is attorney for his brother William, who moved into a care home three years ago. William sold his house and George has been using the capital to pay for William's care fees. However, George approached the care home last month in distress to say that his brother only had £8000 capital remaining and he was worried about who would pay when the money ran out. Despite George and William having regular contact with the care provider, social workers and hospital discharge coordinators during repeated hospital admissions, no professional had followed their legal duty and spoken to them about money. Rules set out in the Care Act, under CQC or NHS regulations are no use if they are not actioned by professionals and this lack of support results in a widespread lack of awareness that is having a significant impact on many clients we support.

And then there is Kathy...

Kathy receives a package of care at home that is arranged by the local authority. Due to a change in the way the local authority buys care, it has written to Kathy to tell her that she must move to a new provider. Kathy does not want to do this, so the local authority says that she must accept a direct payment and manage her own care. The problem is that care providers now class Kathy as a 'private payer' and charge her their private rate, which the direct payment does not cover, meaning she has to find an additional £40 per week to 'top up' her care.

Did you know...?

...the Continuing Healthcare Decision Support Tool has been amended (June 2016)

The changes shouldn't affect the way the DST works.

The 12 care domains and scoring levels all remain the same.

If you are about to have a continuing healthcare assessment information can be found at <https://www.gov.uk/government/publications/national-framework-for-nhs-continuing-healthcare-and-nhs-funded-nursing-care> or please do feel free to contact us to support you at the assessment.

STOP PRESS...

More tinkering - this time the Statutory Guidance: <https://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance>



We receive calls every day from people who are struggling to navigate the current system. If this is you, please get in contact with our team for a free initial consultation.



01926 491181

NEXT ISSUE...

Focus on Attorneys and Deputies



01926 491181



debbiea@moore-tibbits.co.uk



www.qualitysolicitors.com/moore-tibbits

34 High Street, Warwick, CV34 4BE