

**'NRPF' Adults with Care and Support Needs:
The Care Act 2014**

1 February 2018

Care Act 2014

- In force in England since 1 April 2015
- Imposes general duties on local authorities in relation to the ways in which they arrange and deliver care and support

Care Act 2014

- Imposes a duty on local authorities to assess an individual's needs for care and support, and to meet their eligible needs.
- Also imposes a duty to assess carers' needs and to meet their eligible needs.

General Duties

The Care Act 2014 imposes the following general duties on local authorities:

- to promote an individual's 'well-being' **s1(1)**
- to prevent needs for care and support **s2(1)**;
- to promote integration of care and support with health services **s3(1)**
- to provide information and advice **s4(1)**

General Duties

- to promote diversity and equality in service provision **s5(1)**
- to cooperate with 'relevant partners' **s6(1)**
- to comply with requests to cooperate in specific cases **s7(1)**

'Well-being'

- (a) personal dignity (including treatment of the individual with respect);
- (b) physical and mental health and emotional well-being;
- (c) protection from abuse and neglect;
- (d) control by the individual over day-to-day life;
- (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 individual's contribution to society.

Duty to assess and meet eligible needs

The Care Act 2014 imposes a duty on local authorities :

- (i) to **assess** an individual's needs for care and support;
- (ii) to **meet** their eligible needs.

Assessment

Threshold to trigger an assessment is low:

*s9(1) Where it **appears** to a local authority that an adult **may** have needs for care and support, the authority **must** assess (a) whether the adult does have needs for care and support and (b) if the adult does, what those needs*

Assessment

- No set timescale but:

6.29 An assessment should be carried out over an appropriate and reasonable timescale taking into account the urgency of needs and a consideration of any fluctuation in those needs. Local authorities should inform the individual of an indicative timescale over which their assessment will be conducted and keep the person informed throughout the assessment process.

Assessment

- Assessment should involve the adult being assessed, carer, any other person the adult wishes to be involved **s9(5)**
- Adults without mental capacity to engage in assessment should be provided with an independent advocate to assist them **s67**
- Assessor should have necessary expertise or consult someone who does

Eligibility

Care and Support (Eligibility Criteria) Regulations 2015

- 2(1) *An adult's needs meet the eligibility criteria if:*
- (a) the adult's 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 of the outcomes** specified in paragraph (2); and*
 - (c) as a consequence there is, or is likely to be, a **significant impact on the adult's well-being**.*

Eligibility

- S2(2) – *specified 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 the adult's home safely;*
 - (f) maintaining a habitable home environment;*

Eligibility

S2(2) – specified 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 the adult has for a child.*

Eligibility

S2(3) – an adult is ‘unable’ to achieve an outcome if he/she:

- (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.*

Duty to meet eligible needs

A local authority has a duty to meet eligible needs if:

- The adult is Ordinarily Resident in the authority’s area or present in the area with no settled residence - **s18(1)**; and
- They are financially eligible.
- They are not subject to the exceptions relating to immigration status (below).

Meeting Eligible Needs

The local authority can meet an adult's eligible needs by providing (s8):

- (a) accommodation in a care home or in premises of some other type;*
- (b) care and support at home or in the community;*
- (c) counselling and other types of social work;*
- (d) goods and facilities;*
- (e) information, advice and advocacy.*

Meeting Eligible Needs - Accommodation

- If the eligible needs are sufficiently "accommodation-related" (ie the need is for care and support normally provided in the home, or providing the care and support would be "effectively useless" without the provision of accommodation), then there is likely to be a duty to accommodate.
- The availability or otherwise of asylum support under s95 or s4 must be discounted in assessing how eligible needs are to be met.

Meeting Eligible Needs – Care and Support Plan

Care and Support plan – s25-26

- Specifies needs identified and the extent to which they meet the eligibility criteria
- Specifies which needs the local authority will meet and how, with a budget
- Includes advice and information about reducing/preventing/delaying needs in the future

Urgent Needs

19(3) A local authority may meet an adult's needs for care and support which appear to it to be urgent (regardless of whether the adult is ordinarily resident in its area) without having yet—

(a) carried out a needs assessment or a financial assessment, or

(b) made a determination under section 13(1).

Exceptions for Persons Subject to Immigration Control

- s21 excludes those subject to immigration control whose needs arise solely from destitution

Exceptions for Persons Subject to Immigration Control

- Schedule 3 NIAA 2002 excludes some individuals from support on account of their immigration status
- **Except** where this would amount to a breach of human rights or EU law
- If local authority intends to refuse support on this basis, they must assess whether that would breach the adult's human rights/rights under EU law

Carers

- S10(3) definition – adult who provides or intends to provide care for another adult
- Carers’ Assessments – s10

S1 Localism Act 2011

GS v Camden

- No eligible care and support needs so no Care Act 2014 duty
- But breach of Article 3 ECHR if no accommodation
- So local authority must accommodate

Referring to a legal aid solicitor

- Legal aid available for advice on approaching local authorities for support and to challenge assessments
- Means and merits test
- Evidence of means
- Information/documents for referral (see list in handout)

Community Care:
Local authority duties under the
Children Act 1989

Nusrat Uddin

- **Children In Need** - Section 17 Children Act 1989 – usually where there is somebody with parental responsibility
- **Looked After Children** - Section 20 Children Act 1989 – usually where there is nobody for suitable parent responsibility
- Leaving care duties once they turn 18 until at least the age of 21

Children In Need
Section 17 Children Act 1989

Definition

- Section 17(1) of the CA 1989 imposes a general duty on local authorities to safeguard and promote the welfare of children within their area who are “in need”; and
- So far as is consistent with that duty, to promote the upbringing of such children by their families, by providing a range and level of services appropriate to those children’s needs.

This applies to all children in the UK regardless of their nationality or immigration status.

Definition of CIN

- Section 17(1) of the CA 1989 imposes a general duty on local authorities to safeguard and promote the welfare of children **within their area** who are “in need”.

“Within the Area”

- physically present in the geographical area of the local authority

Definition of CIN

- Section 17(1) of the CA 1989 imposes a general duty on local authorities to safeguard and promote the welfare of children within their area who are **"in need"**.

Child in Need

- Section 17(10) if:
 - He/she is "unlikely to achieve or maintain, or to have the opportunity of achieving or maintaining, a reasonable standard of health or development without the provision for him/her of services by a local authority"; or
 - His/her "health or development is likely to be significantly impaired, or further impaired, without the provision for him of such services"; or
 - If he/she is disabled.

Duty to assess

- Social services must assess any child that is or may be "in need"
- Social services can therefore only refuse to assess where there is no realistic prospect that on assessment the child will be found to be "in need".

Timeframe to assess

“Working Together to Safeguard Children” government guidance published in April 2013:

- Within one working day of a referral being received a social worker should make a decision about the type of response that is required and acknowledge receipt to the referrer.
- Maximum timeframe for completion of an assessment should be 45 days, sometimes the needs of the child will mean that a quick assessment will be needed.

Destitute Migrant Families

- With limited leave but a No Recourse to Public Funds condition
- With outstanding applications / appeals for leave to remain which do not raise grounds of asylum or article 3
- Who have been refused leave to remain in applications explicitly / implicitly raising article 8, ECHR and who have not yet been subject to removal directions
- Third Country national primary carers of British children with derivative rights to reside
- With failed asylum claims

Exclusions

- Section 122 of the Immigration and Asylum Act 1999 excludes a family who could claim s.95 asylum support
- Schedule 3 of the National Immigration and Asylum Act 2002 (“NIAA 2002”) excludes certain adult migrants from receiving section 17 support
 - Exception to this exclusion; if refusing to provide s 17 support would result in a breach of a person’s rights under the ECHR or EU law then they will not be excluded

Power to Provide Support

- Section 17(6) CA 1989 sets out that local authorities have the power to provide a range and level of services appropriate to meet a child's needs, including providing accommodation and financial subsistence
- Section 17(3) CA 1989 makes it clear that a local authority has the power to provide support to the entire family

Level of support

- Amount of subsistence monies?
- Suitability of accommodation?

Risks

- Immigration Status. The local authority has a legal duty to inform the Home Office about someone who has failed to comply with direction removals or who is unlawfully present in the UK.
- If there is no outstanding immigration application on human rights grounds, no possibility of an appeal against a future decision to issue removal decisions, and no other human rights reasons why a family must remain in the UK, social services could conclude that they can avoid destitution by returning to their country of origin.
- Social services may threaten to remove the child/ren rather than offer support to the entire family.
- Some local authority are now putting fraud officers in place who will make checks about any benefits being claimed and whether they are being claimed illegally.

Looked After Children
Section 20 Children Act 1989

Definition

- Every local authority shall provide accommodation for any child in need within their area who appears to them to require accommodation as a result of—
 - there being no person who has parental responsibility for him;
 - his being lost or having been abandoned; or
 - the person who has been caring for him being prevented (whether or not permanently, and for whatever reason) from providing him with suitable accommodation or care.

Leaving care duties

The Local Authority has a duty towards eligible and relevant and former relevant children:

- Eligible: Still in care aged 16 and 17 who have been looked after for (a total of) at least 13 weeks from the age of 14.
- Relevant: Aged 16 or 17 who have already left care, and who were looked after for (a total of) at least 13 weeks from the age of 14.
- Former Relevant: Aged 18-21 who have been **eligible** and/or **relevant**

Full leaving care support

- Section 23C - Former relevant children – entitled to support including:
 - Contact [s.23C(2)]
 - Continuity [s.23C(3)]
 - Assistance [s.23C(4)]
 - Support in relation to higher /further education in some cases
- Exclusions of Schedule 3 of the National Immigration and Asylum Act 2002 (“NIAA 2002”) still applies

Support

- **Aged 16-18**
- Duty to ensure pathway plan is in place by 16th birthday
- Duty to make assessment and meet needs
- Duty to provide financial support
- Duty to provide Personal Adviser
- Duty to ensure accommodation
- **Aged 18-21**
- Duty to maintain contact and to provide support through Personal Adviser
- Duty to assist with costs of education, employment and training
- **Aged 21 and over**
- Duty to 18-21 year olds continues if still in education or training
- Duty to ensure vacation accommodation for higher education

Qualifying children & young people

- Children who are under 21 and were looked after at any point after age 16
- Entitled to advice and assistance from the local authority with a view to promoting welfare
- The responsible authority must keep in touch as they think appropriate in order to discharge their duties

Age Assessment

- Age disputes in relation to unaccompanied / separated children
 - Some trafficked and told to put an older age in order to work
 - Other not aware of their age because date of birth was not recorded in their country
- Refused support under Children Acts as local authority believe them to be adults
- Request Age Assessment and challenge Age Assessments in order to find their age to be under 18 and entitle them to support.

Summarise

- Section 17 CA 1989 – (Child in need)
USEFUL for Destitute migrant families with no recourse to public funds
- Section 20 CA 1989 – (Looked after Children)
USEFUL for unsupported separated / unaccompanied minors

Questions?



Asylum support

1. Who can apply?

- Section 95 – Individuals (over 18) who have an ongoing Asylum or Article 3 application, including if they are still waiting for decision on appeal, and their dependants (regardless of their immigration status)
 - NB. A person who has only made a claim for leave to remain on private or family life grounds (that is under Article 8 of the ECHR) will not be eligible for section 95 support
- A 'dependant' can be a husband/ wife/ civil partner, an unmarried couple (if living together for more than 2 of the last 3 years), a child under 18, or a member of the household who is over 18 and is in need of care and attention due to disability
- Section 4 - People who have been refused asylum and have exhausted their rights of appeal and need to apply for support whilst you are making arrangements for a voluntary departure or there is another temporary barrier to you leaving the UK

2. Eligibility Criteria: destitution

- Home Office guidance says

An applicant is deemed destitute if: "They and their dependants do not have adequate accommodation or any means of obtaining it, even if other essential living needs are met, or they and their dependants have adequate accommodation or the means of obtaining it, but cannot meet essential living needs." Failure to disclose all necessary information or to provide false information regarding myself or any of my dependants may lead to information being passed to the police or other agencies for investigation.

- ASAP's Factsheet on "proving destitution" suggests the following evidence
 - If the client has been unsupported for some time they will often be expected to provide evidence of how they have been supporting themselves since their previous support stopped
 - Evidence about their most recent accommodation, where this was and why this accommodation is no longer available. This will usually be in the form of a letter from the person who has been supporting them.
 - A list of prior addresses, with details of how long the appellant stayed at each address and why this support can no longer continue.
 - Evidence of any charitable support the appellant has received, and/or their attempts to seek charitable support.
 - Evidence relating to assets outside the UK that are disclosed on the ASF1 but cannot reasonably be accessed.
 - Copy of any bank / credit card statements for the last 6 months.
 - Lone parents may be asked for evidence of attempts to seek maintenance from the father / mother of the child.
 - Those who previously had permission to work or have worked illegally may be asked for their latest P60 and/ or wage slips, plus evidence that they are no longer entitled to work.

- For those who are living in private rented accommodation, the rental agreement and any requests to leave the property (note that, as from 1st February 2016, refused asylum-seekers have not had the 'right to rent' so this can be pointed out to the Tribunal)
- For those who have previously claimed mainstream benefits, evidence they are no longer entitled (e.g. a letter from the DWP)

3. Additional eligibility criteria for section 4

- HO general position is that someone whose application has been refused should leave the UK. So, someone whose asylum application has been refused needs to meet additional one of these 5 criteria in order to qualify for support:
 - S/he is taking all reasonable steps to leave the UK or place her/himself in a position in which s/he is able to leave the UK
 - S/he is unable to leave the UK because of a physical impediment to travel or for some other medical reason
 - S/he is unable to leave the UK because in the opinion of the Secretary of State there is no viable route of return
 - S/he has applied for judicial review of the decision on her/his asylum claim and has been granted permission to proceed
- The provision of accommodation is necessary to avoid breaching a person's human rights –

Examples of cases where support may be provided under this ground

- people who have made a fresh claim for asylum (further submissions) or have JR proceedings against refusal of further submissions
- refused asylum-seekers who have an outstanding Article 8 claim may also be eligible for s4 support on this ground – but complex often refused, should seek advice
- where the applicant has submitted an out of time appeal against a refusal of asylum and the AIT is considering whether to allow the appeal to proceed out of time
- people with a pending application for leave on statelessness grounds

4. What if an application for support is refused?

- There is a right of appeal to the First Tier Tribunal
- ASAP can assist

3. What does the support consist of?

- For asylum seekers (section 95) cash and accommodation
 - Cash: £36.95 per person, per week
 - Accommodation not in London or in South East (dispersal) – no choice – no right of appeal – possible JR
 - It is possible to apply for subsistence only
- For people who have been refused asylum (section 4)
 - No cash – pre payment card £35.39 per week
 - Accommodation – as above

5. In what circumstances can support be terminated?

- If asylum seeker's case is finally determined
- if granted leave to remain support will cease after 28 days
- if refused leave and no dependent children support will cease after 21 days (but may become eligible for section 4 support)
- if refused leave and there are dependant children support does not cease – NB due to change

No right of appeal in these circumstances

- If there is a change in financial circumstances
- If the person receiving support breaches the conditions, eg breaches the house rules, or concealing financial resources, or being absent from accommodation without permission

There is a right of appeal in these circumstances

6. Recent changes

- Since 15 January 2018 there is no more section 4 (1) (a) and (b) support which was not for refused asylum seekers, and also not for families with children (who may be eligible for section 17 support) but for other destitute migrants on temporary admission, whose circumstances are truly exceptional, who have no other support available, and for whom the provision of support is necessary to avoid a human rights breach and who can show that it is not possible or reasonable to expect them to return to their country of origin
- Also no more section 4 (1) c for people released from detention on bail. But there is a new power (Section 9 of Schedule 10 of the Immigration Act 2016)
- To arrange for the provision of, facilities for the accommodation of that person at that address where a person is on immigration bail subject to a condition requiring the person to reside at an address, and the person would not be able to support himself or herself at the address
- The Home Office have said this power will only be used where there are exceptional circumstances to justify it. Examples include
 - where persons, including foreign national offenders (FNOs), pose a high or very high risk of causing serious harm to the public, or a high risk of reoffending (where that offending will have a demonstrable harmful impact on an individual) for a limited period, or otherwise at the discretion of the Home Secretary in the interest of public protection;
 - where bail conditions, including a residence condition, are imposed by the Special Immigration Appeals Commission (SIAC) to control the risk posed by the individual;
 - where it is necessary to do so in order to avoid a breach of the person's rights under Article 3 of the European Convention on Human Rights. The expectation is that this will cover people with a serious physical and/or mental health condition who cannot immediately return home, who cannot support themselves and who would not otherwise fall to be supported under other arrangements.