



# Young People – Transfers of Proceedings & Service Provision

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GARDEN COURT CHAMBERS



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# Transfer of proceedings concerning children aged 16 plus from family court to COP

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# **The Mental Capacity Act 2005 (Transfer of Proceedings) Order 2007 art. 3(2)**

Provides that where proceedings are pending in a court having jurisdiction under the Children Act 1989 that court may direct the transfer to the Court of Protection where it considers that in all the circumstances it is just and convenient to transfer proceedings.

# Statutory Provisions

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## **The Mental Capacity Act 2005 (Transfer of Proceedings) Order 2007 art. 3(3)**

In deciding whether or not to transfer the proceedings, the court, having jurisdiction under the Children Act 1989, is directed to have regard to:

- whether the proceedings should be heard together with other proceedings that are pending in the Court of Protection;
- whether any order that may be made by the Court of Protection is likely to be a more appropriate way of dealing with the proceedings;
- the extent to which any order made as respects a person who lacks capacity is likely to continue to have effect when that person reaches 18; and
- any other matter that the court considers relevant.



# Case Law: B v RM

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B (A Local Authority) v RM [2010] EWHC 3802 (Fam); [2011] 1 F.L.R. 1635]

## Background

The child in question, AM, was aged 17 and had a diagnosis of severe learning disability, autism and severe Tourette Syndrome. She was not expected to be able to live independently and would require a high level of support from the adults around her to ensure that her needs were met.

Threshold in the care proceedings had been conceded and AM was living in specialist care. Although the family were not content with her current home, there was limited agreement that she should remain there before a final move nearer to the family.

## Case Law: B v RM

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Hedley J identified the matters that the court should take into account when considering to authorise a transfer under Article 3(3). He summarised them at paragraph 28:

- Is the child over 16? (If not, there is no power to transfer);
- Does the child manifestly lack capacity in respect of the principal decisions which are to be made in the Children Act proceedings?
- Are the disabilities which give rise to lack of capacity lifelong or at least long-term?
- Can the decisions which arise in respect of the child's welfare all be taken and all issues resolved during the child's minority?
- Does the Court of Protection have powers or procedures more appropriate to the resolution of outstanding issues than are available under the Children Act?
- Can the child's welfare needs be fully met by the exercise of Court of Protection powers?



# Case Law: B v RM

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## Decision:

Hedley J considered that the particular issues of the case justified an order for transfer in this case, and in determining the issue of jurisdiction found that the key issue was whether, looking at the child's individual needs, it could be said that his or her welfare would be better safeguarded within the Court of Protection than it would be under the 1989 Act. (paragraph 28)

A further reason provided for deciding to transfer this case to the Court of Protection:

“Declarations in the Court of Protection avoid all the negative consequences as I see them of making of a care order whilst at the same time, setting the necessary framework within which AM's needs can be addressed. ” (Paragraph 30)

Judge transferred the case pursuant to Article 3(4)(a) on his own initiative.



# Role of Guardian and the OS

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## Procedural matters:

- The Guardian was invited to consider accepting appointment as litigation friend until AM's 18<sup>th</sup> Birthday.
- The Official Solicitor to be notified of the proceedings and given leave to intervene if so advised.



## Case Law: Re A-F

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### Re A-F (Children) (No.2) [2018] EWHC 2129

#### Background

The court was required to determine issues arising from a judgment concerning the lawful deprivation of children's liberty. The children concerned had particular needs and were subject to care orders depriving them of their liberty for their own safety. As the last hearing had been in August 2017, this hearing was required to review their situation and determine whether the orders should continue for another year. Two of the children were due to turn 16 in the next year.



## Case Law: Re A-F

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### Re A-F (Children) (No.2) [2018] EWHC 2129

#### Decision:

- The benefits weighed heavily in favour of maintaining the forensic status quo and there were no reasons for thinking that the children's welfare would be better safeguarded within the Court of Protection.
- The proceedings concerning the two children due to turn 16 should not be transferred to the Court of Protection.

Note: a key difference was that the care orders were already in place.



## Case Law: Re A-F cont.

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### Re A-F (Children) (No.2) [2018] EWHC 2129

Reasons (paragraph 12):

1. There was no sensible basis for discharging the care orders already in place. The children required the continuing protection of reviews for looked-after children and the support of an independent reviewing officer.
2. Second, the care orders gave the Family Court a continuing, if much reduced, potential role in the lives of the children.
3. Until they approached their 18th birthdays, the children were the responsibility of the local authority's children's social care teams, who were much more familiar with the practice and procedure in the Family Court and Family Division than that in the Court of Protection.
4. The children's guardians could continue exercising their role in the Family Court and Family Division, whereas it was doubtful they could act as litigation friends in the Court of Protection.
5. It might be easier to ensure judicial continuity if there was no transfer.



# Case Law: Re T

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Re T (unreported)

## Background

Case under Children Act concerning a 17 year old who lacked capacity, and care order had been opposed by mother and by time of final hearing care order no longer an option. Court was considering issues of welfare, placement and contact.

Question of how best to address his welfare needs, and whether the Court of Protection was the appropriate jurisdiction.



# Case Law: Re T cont.

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## Re T (unreported)

The Judge, Holman J, determined that orders under the inherent jurisdiction of the High Court and making the child a ward of the court were the best way to safeguard his welfare.

Reasons:

- (1) Retaining the Guardian from the Children Act proceedings, and the continuity of that important relationship and her visits to him, together with representation by his solicitor.
- (2) The potential delay that could be caused by the need to involve the official solicitor.
- (3) The benefit of the court continuing to oversee ongoing decisions over contact and placement through the Inherent Jurisdiction.

Holman J adjourned the applications that had been made under the Mental Capacity Act 2005 to just prior to the child's 18<sup>th</sup> birthday, so as to avoid any delay.



# Final Notes

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- When is the right time to transfer?
- Role of the Children's Guardian?
- At what stage to involve the OS?



# Discussion Points

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- Funding – Care proceedings non means non merits tested public funding
- Children’s Guardian / Litigation Friend
- Welfare Checklist v Best Interests Decisions





# Children Act 1989 - Welfare Checklist

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- S1 (3) In the circumstances mentioned in subsection (4), a court shall have regard in particular to—
  - (a) the ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding);
  - (b) his physical, emotional and educational needs;
  - (c) the likely effect on him of any change in his circumstances;
  - (d) his age, sex, background and any characteristics of his which the court considers relevant;
  - (e) any harm which he has suffered or is at risk of suffering;
  - (f) how capable each of his parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting his needs;
  - (g) the range of powers available to the court under this Act in the proceedings in question.



# Mental Capacity Act 2005

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- S4 (6) He must consider, so far as is reasonably ascertainable—
  - (a) the person's past and present wishes and feelings (and, in particular, any relevant written statement made by him when he had capacity),
  - (b) the beliefs and values that would be likely to influence his decision if he had capacity, and
  - (c) the other factors that he would be likely to consider if he were able to do so.



# Children's services : Care packages provided to parents of disabled children

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GARDEN COURT CHAMBERS



30 April 2020



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# Introduction

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- In this session we will be covering the legal framework for provision of services to parents of disabled children by Local Authority children's services:
  - Disabled Children as “children in need”
  - The duty to assess
  - The duty to provide services- Children Act 1989 and Chronically Sick and Disabled Persons Act 1970
  - Care Planning- the how, who, want and when
  - The duty to accommodate
  - Issues in practice
  - Covid-19 developments.



# Disabled Children: In Need

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- Key legislation: Children Act 1989 and Chronically Sick and Disabled Persons Act 1970
- Section 17 (1) CA 89: duty to safeguard and protect welfare of children
- “within the area”- physical presence, duty to co-operate under s. 27 CA 89: *R (AM) v Havering LBC* [2015] EWHC 1004 (Admin) [33xiv].
- Section 17 (10): A child is “in need” if: (a) he 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 of services by a local authority . . .; or (b) his health or development is likely to be significantly impaired, or further impaired, without the provision for him of such services; or (c) he is disabled.
- Section 17 (11): a child is disabled if he is blind, deaf or dumb or suffers from mental disorder of any kind or is substantially and permanently handicapped by illness, injury or congenital deformity or such other disability as may be prescribed.



# The Duty to Assess

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- Section 17 incorporates a duty to assess: R (G) v Barnet LBC [2004] 2 AC 208 at §32 per Lord Nicholls.
- R (AC and SH) v Lambeth LBC [2017] EWHC 1796 (Admin); decision as to whether to provide support under s. 17 can only be taken after assessment or re-assessment
- Statutory Guidance: Working Together to Safeguard Children 2018  
<https://www.gov.uk/government/publications/working-together-to-safeguard-children--2>
- Assessments also subject to general public law principles
- Maximum timeframe for assessments to conclude: 45 working days from the point of referral:
- Where local authority undertakes to conduct an EHC assessment this should also include duty to assess social care needs



# Guidance for assessments

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- Assessment case-law highlights rigour, detail and specificity in an assessment: R (AB and SB) v. Nottingham City Council (2001) 4 CCLR 295 R (J) v Caerphilly CBC [2005] EWHC 586 (Admin),
- Section 17 (4A) requires a local authority to ascertain and given due consideration to a child's wishes and feelings before deciding what (if any) services to provide to that child. On ascertaining wishes and feelings of disabled children: R (A and B) v East Sussex CC (No 2) [2003] EWHC 167 (Admin); (2003) 6 CCLR 194.
- Common Assessment Framework (CAF)/ Early Help;
- Parent carers and young carers needs assessment, carers assessments introduced by CFA 2014-  
-s17ZD and 17ZE12 of CA 89 (parent carers)  
- s17ZA (i) of CA 89 (young carers).



# Duty to provide services

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- Section 17 (3) CA 89: subject to s. 11 Children Act 89; s. 2 CSDPA 1970. Also s117 Mental Health Act 1983.
- Duty to meet needs identified following lawful assessment
  - LA ”determining” that services are “appropriate”
  - LA being “satisfied” the services are ”necessary”
- Use of eligibility criteria to make that judgment: R (JL) v Islington LBC [2009] EWHC 458 (Admin);
- Services provided under CSDPA must be provided, irrespective of resources- more enforceable; CSDPA trumps CA 89, most services for disabled children are provided under CSDPA
- S.2 services include practical assistance in home, home-based short breaks, recreational and educational facilities, travel, home adaptations, holidays, meals and telephones





# Duty to provide services ctd.

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- Duty to provide accommodation for children and families together- s. 17 (6) CA 89
- Also respite breaks-s. 17 (6) or s. 20 (4) CA 89 R (JL) v Islington LBC 5 [2009] EWHC 458 (Admin);
- See also Short Breaks: Statutory Guidance- guidance on which CA 89 provision- consequences of being “looked after” is provided under s. 20 (4) CA 89.
- Schedule 2, para 6 (1) (c) CA 89 and Breaks for Carers of Disabled Children Regulations 2011
- Families can seek provision of services through direct payment: Community Care, Services for Carers and Children’s Services (Direct Payments) (England) Regulations 2009 SI No 1887. 196 Department of Health, Guidance on direct payments for community care, services for carers and children’s services England, 2009
- Personal budgets



# Social care needs and EHC plans

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- Where a child has an EHC plan, the SEND Code provides specific detail as to the way the provision must be set out in the plan (sections H1 and/or H2). Section H1 must contain the provision which must be made under CSDPA 1970 s2. Section H2 of the EHC plan is reserved (for other provision not required by the CSDPA 1970 but which is ‘reasonably required by the learning difficulties or disabilities which result in the child or young person having SEN’)
- The code suggests (p168) that this ‘may include provision identified through early help and children in need assessments and safeguarding assessments for children’.
- The code suggests two categories of social services which may need to be included in Section H2: residential short breaks, and services provided to children arising from their SEN but unrelated to a disability.
- No new provision for social care element of EHCP from CFA 2014.
- EHC Plans reviewed every 12 months; social care representative must be invited to review and given two weeks notice- no absolute requirement they attend.
- No appeal re social care elements of EHC Plan- tribunal can make non-binding recommendations.



# Charging for children's services

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- Children's services authorities have the power to charge for services provided under the Children Act 1989. Authorities may recover 'such charge as they consider appropriate' (Children Act 1989 s29(1)) and, in so doing, if the child is under 16, can take into account the financial circumstance of the parents, and if 16 or over, can take into account the child's means (section 29(4)). However, no person can be charged while in receipt of income support or a range of other benefits (section 29(3)). Furthermore, an authority cannot require a person to pay more than he or she can reasonably be expected to pay (section 29(2)).
- Children's services authorities can also charge for services provided under CSDPA 1970 s2.
- In practice few authorities do charge parents or children for services provided either under Children Act 1989 Part III or CSDPA 1970 s2.302



# Issues in practice

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- Assumptions re parental care v approach under Care Act for adults;
- Sufficiency of direct payments;
- Quality of respite provision affecting take-up of respite provision;
- Poor quality assessments, limitations of legal assessment, legal aid;
- Delays, wrangling, difficulty with enforcement;
- Lack of practical anticipatory support for families
- Failure for EHC needs assessment to trigger a concurrent social care assessment under s. 17 CA 89- instead of simply “not known to this service”
- Lack of national eligibility criteria for children’s social care- can be eligible in one local authority but not in another;



# Covid-19: a reduction in rights for disabled children?

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- 3 April 2020- Covid-19: Guidance for local authorities on children's social care available here: <https://www.gov.uk/government/publications/coronavirus-covid-19-guidance-for-childrens-social-care-services/coronavirus-covid-19-guidance-for-local-authorities-on-childrens-social-care>
- 19 April 2020- Supporting vulnerable children during the coronavirus
- 21 April 2020 Coronavirus guidance on direct payments: <https://www.gov.uk/government/publications/coronavirus-covid-19-guidance-for-people-receiving-direct-payments/coronavirus-covid-19-guidance-for-people-receiving-direct-payment>
- 27 April 2020- new SI- The Adoption and Children (Coronavirus) (Amendment) Regulations 2020 (CORONAVIRUS) (AMENDMENT) REGULATIONS 2020 and Explanatory Memorandum: <http://www.legislation.gov.uk/uksi/2020/445/made/data.pdf>
- "Destroying safeguards/ de-regulation on steroids"- Article 39- lack of consultation or parliamentary scrutiny, questions re compliance with ECHR, UNCRC.



# New regulations- summary of key changes from Article 39

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- Social worker visits to children in care – can now be via a phone call but clear 6-weekly duty removed
- Six-monthly independent reviews of a child’s care no longer mandatory
- Adoptions to “proceed swiftly”
- Care standard weakened in children’s homes
- Twice-yearly Ofsted inspections of children’s homes no longer required
- Monthly independent visits and reports on children’s homes no longer mandatory
- Emergency’ foster care placements to last for nearly 6 months
- Short breaks can last for 75 days without care planning safeguards
- “Reasonably practicable” caveat added to timings of independent review of children’s social care complaints
- Children’s homes a place of detention for children potentially infected with COVID-19
- See more: <https://article39.org.uk/news/>



# Adult Care: Care Act 2014 provision for the young disabled adult

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30 April 2020



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# Transitional assessment and service provision

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**All references in these slides are to the pre-Coronavirus Act 2020 version of Care Act 2014. See slide 14 for the effect of the 2020 Act.**

## **How early will an adult care assessment be carried out in advance of a child reaching 18?**

**Care Act 2014 (CA 2014) s 58**– the duty to carry out a “**child’s needs assessment**”; arises when the child is likely to have needs for care and support after becoming 18, and it would be of significant benefit to the child to carry out the assessment.

See **Care and Support Statutory Guidance**:

- A child’s needs assessments should be carried out at the right time for the young person and when the LA can be reasonably confident about what the young person’s need for care and support will look like after they turn 18 (16.7)
- For those who have an EHC plan preparation for adulthood must begin from Year 9 and the transition assessment should be part of an annual statutory review of the EHC plan (16.11)
- Having carried out a transition assessment, the local authority (LA) must give an indication of which needs are likely to be eligible needs once the child reaches 18 to ensure that they or their carer understand the care and support they will receive and can plan accordingly (16.51)
- LAs should consider providing an indicative personal budget to help with planning before entering the adult system (16.53)
- The purpose of the transitional assessment is to provide young people and their families with information so that they know what to expect in the future and can prepare for adulthood (16.4).

**CA 2014 s 67(2)** provides a right to **independent advocacy** where criteria in **CA 2014 s 67(3) - (5)** are met. \_\_\_\_\_



# Transitional assessment and service provision

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## **Continuity of services when a child reaches 18**

- Where the LA was providing services for a child in need in the exercise of functions under s 17 Children Act 1989, or s 2 CSDPA 1970, and has a duty to carry out a child's needs assessment, the LA must continue providing those children's services until the LA begins to provide adult services or makes a decision not to provide them. (See **s 17ZH Children Act 1989** and **s 2A CSDPA 1970** (introduced by s 66 CA 2014) and the Care and Support Statutory Guidance, para 16.68. )
- See also **Children Act 1989 s 17ZG**: where an EHC plan is maintained the LA may continue to provide s 17 services after the child reaches 18 so long as the EHC plan is maintained; **Children Act 1989 s 17ZI**: If a "child's needs assessment" under CA 2014 is required, s 17 services should continue until adult services provided/a decision not to provide them.
- *"Under the Care Act 2014, if, having carried out a transition assessment, it is agreed that the best decision for the young person is to continue to receive children's services, the LA may choose to do so. Children and adults' services must work together, and any decision to continue children's services after the child turns 18 will require agreement between children and adult services"* (Care and Support Statutory Guidance, para 16.72).

# Transitional assessment and service provision

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## **CA 2014 carer's assessment in advance of a child reaching 18**

**CA 2014 s 60** – duty to carry out a “**child carer's assessment**” - an assessment of whether the carer is likely to have needs for support after the child becomes 18.

The duty to assess arises when it appears to a LA that a carer of a child is likely to have needs for support after the child becomes 18 and is satisfied that it would be of significant benefit to the carer to do so.



# What are the key principles for assessment and the disabled adult's right to a care package under CA 2014 ?

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**The Well-being principle - CA 2014 s 1(1):** the LA is under a general duty **in exercising a function under CA 2014 Part 1** in respect of an individual to promote the individual's well-being, a concept explained in s 1(2), and the LA must have regard in particular to a list of 8 factors set out at **s 1(3)**:

- (a) the importance of beginning with the assumption that the individual is best-placed to judge the individual's well-being;*
- (b) the individual's views, wishes, feelings and beliefs;*
- (c) the importance of preventing or delaying the development of needs for care and support or needs for support and the importance of reducing needs of either kind that already exist;*
- (d) the need to ensure that decisions about the individual are made having regard to all the individual's circumstances (and are not based only on the individual's age or appearance or any condition of the individual's or aspect of the individual's behaviour which might lead others to make unjustified assumptions about the individual's well-being);*
- (e) the importance of the individual participating as fully as possible in decisions relating to the exercise of the function concerned and being provided with the information and support necessary to enable the individual to participate;*
- (f) the importance of achieving a balance between the individual's well-being and that of any friends or relatives who are involved in caring for the individual;*
- (g) the need to protect people from abuse and neglect;*
- (h) the need to ensure that any restriction on the individual's rights or freedom of action that is involved in the exercise of the function is kept to the minimum necessary for achieving the purpose for which the function is being exercised.*

Therefore, the general duty and requirement to have regard to these factors apply when the LA carries out a needs assessment and takes all the steps required under CA 2014 towards deciding on the care package.

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# What are the key principles for assessment and the disabled adult's right to a care package under CA 2014 ?

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## The decision-making process under CA 2014 Part 1

Duty to assess needs for care and support (**CA 2014 s 9**)



Decision on whether needs meet the eligibility criteria  
(**CA 2014 s 13** and **Care & Support (Eligibility Criteria) Regs 2015**)



Financial assessment (whether to charge/amount of charge) (**CA 2014 ss 14 and 17**)



Duty to meet eligible needs (**CA 2014 s 18**)

and

Duty to prepare a care and support plan, including stating the personal budget  
(**CA 2014ss 24, 25 and 26**; and for the various ways of meeting needs see **CA 2014 s 8**)



# What are the key principles for assessment and the disabled adult's right to a care package under CA 2014 ?

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What the Care and Support Statutory Guidance says about the relevance of cost in the decision on how to meet needs under CA 2014:

*10.27 In determining how to meet needs, the local authority may also take into reasonable consideration its own finances and budgetary position, and must comply with its related public law duties. This includes the importance of ensuring that the funding available to the local authority is sufficient to meet the needs of the entire local population. The local authority may reasonably consider how to balance that requirement with the duty to meet the eligible needs of an individual in determining how an individual's needs should be met (but not whether those needs are met). **However, the local authority should not set arbitrary upper limits on the costs it is willing to pay to meet needs through certain routes** – doing so would not deliver an approach that is person-centred or compatible with public law principles. The authority may take decisions on a case-by-case basis which weigh up the total costs of different potential options for meeting needs, **and 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.*

(Emphasis added.)

# What are the key principles for assessment and the disabled adult's right to a care package under CA 2014 ?

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## How care provided by a parent of a disabled young adult should be taken into account:

### “Carer blind assessments” and the “willing and able principle” (1)

- It is clear from the terms of the eligibility criteria (Care and Support (Eligibility) Regs 2015) and statutory guidance that care provided by a carer must be **disregarded** in a CA 2014 needs assessment.
- Needs are to be assessed against eligibility criteria on the basis of whether the adult can achieve the relevant outcomes “**without assistance**” (reg 2(3) Care and Support Eligibility Regs).
- At the care planning stage: the question to be asked is what care (if any) is another person “**willing and able**” to provide

(1) See Community Care and the Law, Luke Clements 7<sup>th</sup> Ed, LAG p 83-4.

# What are the key principles for assessment and the disabled adult's right to a care package under CA 2014?

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## How care provided by a parent of a disabled young adult should be taken into account continued –

- The Care and Support Statutory Guidance states the principles clearly at para 6.15:

*During the assessment, local authorities must consider all of the adult's care and support needs, **regardless of any support being provided by a carer**. Where the adult has a carer, information on the care that they are providing can be captured during assessment, but it must not influence the eligibility determination. After the eligibility determination has been reached, if the needs are eligible or the local authority otherwise intends to meet them, **the care which a carer is providing can be taken into account during the care and support planning stage**. The local authority is not required to meet any needs which are being met by a carer who is **willing and able** to do so, but it should record where that is the case. This ensures that **the entirety of the adult's needs** are identified and the local authority can respond appropriately if the carer feels **unable or unwilling** to carry out some or all of the caring they were previously providing. (Emphasis added.)*

- See also the duties to assess and provide support for carers: Duty to assess a carer's needs for support in caring (**CA 2014 s 10**) (“**a carer's assessment**”) according to eligibility criteria (under the 2015 Eligibility Regs), followed by an eligibility decision (**CA 2014 s 13**) and duty to provide services to meet the carer's eligible needs for support in caring (**CA 2014 s 20**). **CA 2014 s 10(5)** requires an assessment of whether the carer is able and likely to continue to be able to provide care and **whether the carer is willing and likely to be willing to do so**.

# Commissioning care directly v. LA commissioned services

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## **Direct Payments (DPs) (commissioning directly on behalf of the cared-for adult)**

- The LA must provide DPs where requested if satisfied it is an appropriate way to meet the needs (ss 31 and 32 CA 2014).
- If the adult lacks mental capacity DPs can be paid to a person authorised under MCA 2005, or with such person's agreement, or to a person the LA considers suitable (CA 2014 s 32(4)).
- DPs must not be used to pay a spouse/partner or one of a list of specified family members if they live in the same household as the person (see the list at reg 3(3) Care and Support (DPs) Regs 2014) - includes parents, siblings, aunts, uncles and grandparents who are living in the same household BUT there is an exception, where the local authority considers that *it is necessary* to make DPs in order to meet the person's needs (or to provide administrative management support). Statutory guidance gives an example of where the family members uniquely have the ability to communicate with the looked-after person, through years of care for them as a child (para 12.36).
- A person is not required to have their needs met by DPs and can decide at any time that they no longer wish to continue to receive DPs (CA 2014 ss 31 and 32; statutory guidance, para 12.69).
- The LA must be satisfied that the authorised person is capable of managing direct payments with whatever help the person will be able to access and must terminate payments if no longer so satisfied. (See ss 31(6) and 32(8); see s 33 (4) and (5) for circumstances in which DPs can be terminated and, in some circumstances, repayment required).
- Amount: must be sufficient to meet the need (ss 31, 32 and statutory guidance, paras 11.24 and 12.25).



# Commissioning care directly v. LA commissioned services

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## Pros and cons

### Advantages of DPs

- Greater flexibility for the cared-for person and their carer in how care is organised (choice and control)
- Personal choice as to whom to engage as carer/PA (cultural factors may be important)

### Disadvantages of DPs

- Responsibility for administration can be onerous (for the parent/other authorised person). Note that LAs should give advice and should monitor, so should mitigate difficulties (statutory guidance para 12.49). Failure to do so could be maladministration.
- Difficulties faced by the carer (/the authorised person in receipt of DPs) in sourcing the care that is needed (an added burden on top of their caring role; task of organising difficult care package shifted to carer)
- Less transparency vis-a-vis the LA (can be a relevant where dispute about extent of needs or safeguarding issues raised)
- DPs not enough to pay for the type or amount of care needed to meet the assessed need (seek explanation; complaints process; potential legal challenge)



# What problems can arise for young disabled adults and their parents in the transition from children's to adult services?

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- Transitional planning protracted / gaps in provision;
- Issues under children's services may re-emerge in adult services: e.g. size of care package/ difficulty finding carers to commission/issues about the amount or quality of respite care;
- Possible anxiety for parents when there is **loss of parental responsibility in the context of inadequate transition planning/disputes around services**. Discussed in *Lawson, Mottram and Hopton [2019] EW COP 22*, a case concerning applications by parents of young adults to be appointed their Personal Welfare Deputies - Hayden J said, with reference to data showing a spike in such applications for deputyships in respect of young people between 18 and 24:  
*“The data which I have analysed (paragraph 26 above) may, I suspect, reflect the stress and anxiety experienced in consequence of the transition from child to adult services. As a judge of the Family Division and as a judge of the Court of Protection I have seen from both perspectives the acute distress caused by inadequate transition planning. The remedy for this lies in promoting good professional practice. It is not achieved by avoidably eroding the autonomy of the young incapacitous adult.”*



# Changes under Coronavirus Act 2020 (CVA 2020) s 15 and Sch 12

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*“This is a health and social care obliteration Bill by a different name.”* Baroness Grey-Thompson, Hansard, 24 March 2020

- **The provisions are temporary** - Most of CVA 2020, including s 15 and Sch 12 but with exceptions as regards some of the provisions relating to charging, continuity of care and support when a person moves and powers and duties in relation to guidance, automatically expires after 2 years (s 89); there is provision for earlier expiry or extension for a further 6 months (s 90); there is 6 monthly parliamentary review as to whether the temporary provisions of CVA 2020 should remain in force (s 98).
- **Only applicable to an LA if that LA has decided to convert to the Sch 12 scheme.** The statutory guidance – **Care Act easements: guidance for local authorities** (31 March 2020) requires that LAs carry on under normal CA 2014 duties for as long as possible. The LA must make a specific decision in accordance with the guidance before implementing the “easements”. Only a handful of LAs have done so so far.
- **Removal of assessment duties:** CVA Sch 12 para 2 removes the requirement to comply with a list of assessment duties including under ss 9, 10, 58 and 60 CA 2014. The LA will have a power to assess.
- **Removal of the CA 2014 s 18 duty to meet eligible needs.** This is replaced by a duty to meet needs where otherwise there would be a breach of the person’s human rights. In other cases it has a power to meet needs (CVA Sch 12 para 4).
- The LA does not have to comply with the duties to provide services under the **transitional duties to young adults** under s 2A CSDPA 1970 and s 17ZH Children Act 1989 (CVA 2020 Sch 12 para 15).

# Thank you

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