

Chapter 13: Managing adult social care

1. Mrs Akuffo is about to be discharged from hospital where she has been receiving treatment for bipolar disorder. She has chronic diabetes and severe arthritis and she has difficulty managing stairs and much of her personal care. She has no income or savings. She has no home to return to as her private landlord terminated her tenancy shortly before her hospital admission, as she was said to have been shouting abusive comments to neighbours. How would you assess her needs for social care services?

Your starting point is to consider whether this person is someone to whom you owe a duty under the Care Act 2014. Section 9 of the Care Act provides that where it appears to a local authority that an adult may have needs for care and support, the authority must assess those needs. That looks pretty clear, you are under a duty to assess. How you carry out that assessment is determined by the guidance on assessment – see paragraph 6 of the guidance. Remember that the purpose of assessment is to identify a person's needs for support and how best to achieve outcomes that maximize their well-being.

Once needs have been assessed, then an authority has to determine which of those needs it will meet. This is done by measuring the needs against the eligibility criteria set out in section 12 of the Act. The details on the criteria are provided in the Care and Support (eligibility criteria) Regulations 2015. It is clear on the facts that she meets all three conditions set out in regulation 2. Remember, needs are only eligible if all three conditions are met.

What difference does it make that she was discharged from hospital following detention under the MHA? In reality it means that you are already too late – the assessment of need and design of a support package would normally be part of the considerations that Mrs Akuffo could be discharged. If her health was at risk without such a package, her detention would continue to be justified. S.117 of the MHA means that the Health Authority will pay for the community care costs.

But should you be assessing her on your own? Clearly not. The Care Act 2014 requires cooperation and partnership working. Who should be cooperating with you to provide for Mrs Akuffo's needs. Certainly housing. If her accommodation needs are purely defined by a lack of housing, then that is a matter for the housing department (in discussion with you). But if her need for housing is linked to her need for care that is also a matter for social services. On the face of it, Mrs Akuffo's needs for housing are for ground floor or premises (or single storey property accessible by lift), and that is for the housing department to provide if, as is likely, she is assessed as having priority need under housing legislation.

She runs the risk of becoming homeless again if, because of her mental health problems, she alienates neighbours and faces complaints and possible eviction. Perhaps the first thought, that all she needs is housing, is wrong; she needs, perhaps, support beyond accessible accommodation, as she needs to be accommodated within a suitable social

environment. This is for you to assess. The decision to provide accommodation must not fall between the housing department and the social services department – one or other must accept responsibility to house her.

2. Mr O’Keefe is dissatisfied with the assessment of his care needs. How can he complain about this?

There are several ways of challenging service provision decisions. Service users can use the local authority complaints procedure. They can also go to the local government ombudsman. There is also the option of judicially reviewing the local authority decision. We discussed judicial review in Chapter 1. There are increasingly procedural barriers preventing cases going to court for judicial review. Importantly applicants are obliged to engage in ADR or other attempts to settle their cases. This is probably beneficial in cases of challenges to service provision.

Each method of challenging decisions requires a great deal of energy of the complainant. It is better to get decisions right in the first place.

3. The funding available for domiciliary services has been cut in your local authority area. How does that impact upon your service users who have a care plan in place?

Your starting point here is the House of Lords decision in *R. v Gloucestershire CC Ex p. Barry* which despite being decided in 1997 remains good law. In *R (on the application of KM) (by his mother and litigation friend JM) (FC) v Cambridgeshire County Council* (2012) the current law – as derived from the decision in *Barry* was summarised by the Supreme Court as follows:

When a local authority is required to consider whether it is “necessary in order to meet the needs of that person for that authority to make arrangements for” the provision of any of the matters on the service list, it is required to ask itself three questions and should do so in three separate stages:

(i) What are the needs of the disabled person?

(ii) In order to meet the needs identified at (i), is it necessary for the authority to make arrangements for the provision of any of the listed services?

(iii) If the answer to question (ii) is affirmative, what are the nature and extent of the listed services for the provision of which it is necessary for the authority to make arrangements?

In cases like the present in which a disabled person qualifies for a direct payment in lieu of its own provision of services to him, the local authority is required to proceed to the fourth stage as follows:

(iv) What is the reasonable cost of securing provision of the services which have been identified at (iii) as being those for the provision of which it is necessary for the authority to make arrangements?

The local authority is entitled to adjust provision following cuts in funding but must reassess the needs and answer the questions in order for such a decision to be lawful.

4. Why do you think that the government is constantly revisiting and reforming its mechanisms to ensure that adult social care services are of an adequate quality? Do you think that the current arrangements will be effective?

The problems are caused by the failure of complaints procedures and regulation to reach poor service delivery. Families do not complain, as they are frightened that there is no alternative provision, service users are vulnerable and often inarticulate. No complaints procedure is going to change this, and regulation will have to be very intrusive in order to make any real difference.

5. Why were the Care Act easements implemented? Do you think there are sufficient protections for vulnerable service users? Can you find out whether your local authority activated the easements, and if so, to what stage?

The concern was that without the Care Act easements statutory duties would be breached because of an escalating demand for services and illness/absence of adult social care workers.

The easements certainly have the potential to put vulnerable people at risk, although there are constraints on their operation. Indeed the government makes it clear it does not expect the easements to be used. If you go to the CQC website you can locate the Coronavirus webpage which sets out which local authorities implemented the easements.