

Policy Briefing: Social Care and Covid-19

Overview

This briefing sets out Leonard Cheshire's policy positions in relation to Covid-19 and social care as well as analysis of the provisions outlined in the government's Coronavirus Act. These measures change local authorities' duties to assess eligibility for social care support for disabled people and the unpaid carers who support them.¹

While we welcome the provisions of additional funding to support people during this crisis², we are highly concerned about the effect of the proposed changes on the powers and duties of the Care Act 2014. Taking away established rights and safeguards will have a huge impact on disabled people, putting them at an even greater risk.

The large-scale changes call into question eligibility for social care support, creating unnecessary stress for disabled people, their families and carers. This will potentially leave them without vital support — or the rights to request any. The government must outline the steps to mitigate this and ensure everyone is able to access the care they need.

This new Act will also put immense strain on charities supporting disabled people, while these organisations are trying to preserve delivery of essential services during the pandemic. The government must provide for additional support so that organisations can continue to effectively respond to the needs of disabled people in the coming months.

While we understand that action must be taken immediately to respond to the current crisis, we welcome the decision for this Act to be reviewed every six months to ensure there is scope to monitor the impact of provisions and ensure that all action taken continues to be proportionate to need.³ There is some concern, however, from the government's indications that this rolling six-month review may be merely debates on the Act as a whole without the opportunity to reflect on whether individual elements are working effectively.

¹ Coronavirus Act 2020. See <http://www.legislation.gov.uk/ukpga/2020/7/contents/enacted/data.htm>

² Of £5bn announced at Budget 2020, £2.9bn is for council services: £1.6bn direct to councils for all services; £1.3bn to 'improve hospital discharge' and free up more than 16,000 beds; £500m Hardship Fund has been given for local authorities to support people during this crisis.

³ The Act is set to expire two years after the date on which it is passed. This is subject to a power to alter the expiry date to make it earlier or up to six months later (clause 76). There is also a power vested in the Minister to suspend and revive the operation of any provision of the Act (clause 74).

The Coronavirus Act's emergency powers and social care⁴

These measures are serious and will have potentially enormous implications in an already overstretched sector. However well-meaning, these provisions may have unintended consequences. It is vitally important that the current emergency does not lead to an erosion of disabled people's rights or support when these are needed most.

By suspending the Care Act, 2014, the Coronavirus Act sets out the removal of disabled people's established rights to social care. The proposed changes to the duty to meet the eligible needs of disabled people (Section 18) and their carers (Section 20) are of particular concern.

Duty to assess

Currently, local authorities "must" assess any adult if it appears that s/he "may" have needs for care and support.⁵ The Act removes this duty: for its duration, local authorities will no longer be obliged to determine if someone has needs for care and support.⁶ The consequences of this are profound as it is not always obvious that someone has care needs or what these needs entail, which is why they require an assessment.

Duty to meet needs

Currently, local authorities only have a duty to meet "eligible" needs.⁷ Under the Act, local authorities will only have to provide care "if they consider it necessary" for the purposes of avoiding a breach of the European Convention of Human Rights (ECHR). It's important to state that there is no human right to social care or positive obligation under the ECHR to meet care needs. The proposed Coronavirus Act also aims to suspend local authorities' duties for young people transitioning to adult social care. The removal of obligations to support young people and their families will harm their ability to access established rights and we are concerned about the impact this will have on the futures of disabled young people.

The Act disapplies these core duties. It states that local authorities will retain the power to carry out needs assessments as they consider appropriate to determine whether services should be delivered. They will also retain the power to meet a person's needs under s.19 CA 2014 but they will no longer be required to meet needs under the CA 2014, or to prepare and review care and support plans.

⁴ The changes to adult social care are contained in [Schedule 11](#) of the Act.

⁵ This is a low threshold and care and support can include any kind of help bar healthcare, housing and subsistence (which are the responsibility of the NHS, local authority housing departments and the DWP, respectively). (s.9 CA 2014)

⁶ Schedule 11, clause 2(1)(a).

⁷ S.18 CA 2014. This is a very high threshold. The adult must, because of a physical or mental impairment or illness be "unable" to achieve at least two of 10 specified outcomes and there must be, or likely to be, a "significant impact" on their wellbeing as a result (S.13 CA 2014 and reg 2, Care and Support (Eligibility Criteria) Regulations 2015/313.) These are very serious needs - the outcomes include an inability to maintain a healthy diet, personal hygiene or a habitable home, or to stay safe in the home. They also include needs related to loneliness - an inability to maintain family or other personal relationships or to access the community, for example.

It is Leonard Cheshire's understanding that, as a result of the Coronavirus crisis, local authorities are more likely to place disabled people in settings inappropriate to their needs in order to save money. Instead of specialist disability care support (typically costing c£1200/ week), disabled people are increasingly likely to be placed in care homes for the elderly (costing c£600/week). Indeed, we have seen some of this activity already, prior to the Coronavirus. Additionally, many people are being told they will be increasingly required to rely on family members to deliver their care needs. There has also been an increasing trend of people being placed in a social care setting where their needs would historically mean they would receive primary care nursing support. Placing people in inappropriate care settings, especially with very little notice, will mean that staff do not have the required skills and training. Sufficient resources and training are urgently needed to safeguard the health and well-being of the person being cared for as well as social care staff who are adapting to a rapidly changing and highly pressurised environment.

Recommendations:

- The impact of councils no longer having to follow the Care Act will have serious consequences for disabled people and their established, hard-fought for protections. The decisions that are taken need to, as a number one priority, be proportionate so that disabled people are not made more vulnerable.
- It is essential that councils continue to assess the risks and vulnerabilities affecting disabled people and their unpaid carers, particularly when reprioritising services. Adequate funding for social care is critical to enabling local authorities to respond to the additional pressure of coronavirus on access to social care.
- The Act removes the requirement for specific local authorities to meet eligible health and social care needs. We are concerned that those who are deemed to have lower priority needs could see their condition develop very rapidly. Where the basic level of support is removed, this could mean additional pressure in hospital settings resulting in increased safety risks.
- Disabled people who receive social care should be provided information on what they should expect in terms of service during this time as well as guidance on what they can do if they are concerned about their social care support entitlements under the Act's provisions.
- Where there are delays to the introduction of care packages or where care support provisions are removed, risk assessments need to be conducted.
- We are concerned that the changes to social care eligibility and assessments may mean that many of those with the highest level of vulnerability to the Coronavirus crisis itself are not identified. The government must outline what ameliorative steps it is taking to ensure that this is not the case.
- Social care workers are on the front-line in this unprecedented crisis in an already over-stretched sector. Staff training and sufficient resource – including full access to Personal Protective Equipment (PPE) - is needed to be able to respond to rapidly-changing needs of the people in their care.

- The application of the Act's powers must be time-bound and proportionately delivered. More clarity on when such emergency powers come into effect and who will be the body deciding this is needed from the government.
- Proper consideration and planning is needed for sufficient measures to be put in place so that people do not permanently drop out of the social care system once these emergency powers end.

Impact on unpaid carers

The implication of the crisis and the Act's changes in eligibility is that unpaid/ family carers will be required to step-in where possible to provide care for disabled people and older people who would normally receive care support. The government must provide support for unpaid carers who need to self-isolate and/or cannot provide care to disabled people and/or older people.

The CA 2014 requires local authorities to support unpaid/ family carers provide care to people with needs.⁸ It is important that unpaid/ family carers receive assurances that their needs/risks will continue be considered and that processes are sufficiently robust. These considerations are particularly critical in cases where unpaid carers are themselves disabled or have health conditions.

Given that this is a time that the government will require many families to step in for the care needs of disabled people, it is important that unpaid carers' income is protected so that they – and the disabled people they care for – can be financially secure during this period.

Impact on the social care sector

There is a serious risk that care providers face collapse during this crisis. We are calling for Clinical Care Commissioners to pay up front for homecare as is originally planned, rather than in monthly arrears for the actual amount delivered as is normal for providers.

Sustaining the work of social care providers and charities supporting disabled people

With the right support and funding organisations can continue to play a vital role in ensuring disabled people get the support they need, whilst alleviating the enormous pressures on the NHS and local authorities which are building daily as cases and hospital admissions rise.

However, there is a likelihood that many small and medium-sized service providers could collapse as a result of the crisis. We support calls from the sector for the government to provide stabilising funding package to ensure that it can sustain its important work at this highly pressurised time of great risk.

⁸ (s.20 CA 2014).

Support for key workers

We welcome the government's support provisions for key workers and the recognition that social care workers and auxiliary workers are on the front line in the efforts to support the most vulnerable at this time. This affects 4,000-4,500 of Leonard Cheshire's staff delivering social care services.

However, despite being included in the government's group of key workers, many of our social care staff have experienced a lack of awareness among supermarkets that they are subject to entitlements. As with NHS workers, care workers are similarly providing a public service in this time of national crisis. The government must take steps to increase parity between NHS workers and care workers as well as increasing awareness among supermarkets and the wider public that care workers are subject to the same protections in accessing food supplies.

While we appreciate the need to introduce a reduced service in public transport in major towns and cities, it is important that service is sustained that addresses the needs of key workers who rely on it to get to work. Steps need to be taken so that public transport is available and does not become so congested that it increases the risk of key workers becoming infected.

Access to Personal Protective Equipment (PPE)

The Department of Health and Social Care (DHSC) has confirmed that free distribution of fluid repellent facemasks has started. Every care home and home care provider will receive at least 300 facemasks. It is good that DHSC is working with wholesalers to ensure a longer-term supply of all aspects of PPE, including gloves, aprons, facemasks and hand sanitiser and that there is a dedicated line for the health and social care sector.

However, we are concerned that all available PPE continues to be prioritised for the NHS, meaning that social care services are left without resources. Critical PPE is unavailable following extremely large orders being placed by NHS Trusts. This is putting social care staff at high risk and, as a consequence, absence is rising rapidly. If staffing levels become unsafe customers will be transferred to hospital and then need vital NHS resource.

Social care staff should receive the same PPE (protective masks, hand sanitiser, aprons etc) as NHS staff. Frontline testing for Coronavirus also needs to include Social Care staff to reduce rising absence and confirming that care workers without COVID-19 can return to work sooner. It is the case that for many of our clients who have complex disabilities will be more likely to end up in the hospital. Targeting resources at an earlier stage will reduce a highly pressurised NHS.

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