

Adults social work group response to Coronavirus Crisis

The British Association of Social Workers (BASW) is the professional association for social work in the UK with offices in England, Northern Ireland, Scotland and Wales. With over 20,000 members we exist to promote the best possible social work services for all people who may need them, while also securing the well-being of social workers working in all health and social care settings.

Care Act easements – key issues for social workers

1. This statement provides analysis and commentary on the *Care Act easements: guidance for local authorities (DHSC 1/4/20)* and *Responding to Covid-19 – the ethical framework for adult social care (DHSC 19/3/20)*.
2. The DHSC guidance is helpful in how it frames the ‘easements’ within the context of the Care Act, and the ethical framework provides useful principles to assist with implementation. But BASW England thinks that further advice and guidance is needed at a national level to support social workers with implementation.
3. As well as providing advice for BASW members, this position statement is intended to contribute to dialogue with the DHSC and adult social care organisations on improving the way that local authorities apply the requirements of the Care Act easements guidance and take into account the ethical framework.
4. It should be noted that this position statement does not intend to provide an interpretation of the law. It aims to enable social workers to better understand the legal framework within which they make professional judgements and apply their expertise. However, there are a number of elements of the legal framework that are not yet clear.
5. The focus of BASW England activity is on supporting the application of the Government guidance, where local circumstances require it. Further down the line we will press for local authorities to cease exercising the Care Act easements as soon as is feasible and will campaign with others for the restoration of the valuable and long fought-for rights and expectations contained in the Care Act.

The Guidance: outline of the sections most relevant to social workers

1. The Coronavirus Act means that the core duties of the Care Act need no longer apply in relation to assessment and care planning. The stated purpose of the Care Act easements is to “streamline present assessment arrangements and prioritise care so that the most

urgent and acute needs are met”. Set out below are the easements most relevant to social workers and the circumstances where they can be put in place.

2. The Care Act easements guidance advises that local authorities may wish to consider the option of “using current flexibilities within the Care Act” on making changes to “short term allocation of care and support”. The implication is that taking this step may be sufficient to manage changes in demand, and therefore Care Act easement might not be required.
3. Each Local Authority has to decide whether to apply the easements, and is required to communicate this decision to “all providers, service users and carers”. This decision should only be taken in the following circumstances:
 - a) “the workforce is significantly depleted”, or
 - b) “demand on social care increased”and as a consequence of a) or b):
 - i. “it is no longer reasonably practicable for it to comply with its Care Act duties (as they stand prior to amendment by the Coronavirus Act)” and
 - ii. “where to continue to try to do so is likely to result in urgent or acute needs not being met, potentially risking life”.
4. The guidance envisages ‘streamlining’ and ‘prioritisation’ as being two different stages, and that local authorities should only move into the prioritisation stage if streamlining is not sufficient to ensure urgent and acute needs are met, and if they do so “decisions taken to prioritise or reduce support should be reviewed every two weeks with the Principal Social Worker”.
5. Where a local authority opts to apply the easements, the core duties of the Care Act no longer apply in relation to assessment and care planning, as stated in the guidance: “The duties on Local Authorities to meet eligible care and support needs, or the support needs of a carer, are replaced with a power to meet needs”. In the absence of eligibility criteria, the duty for meeting individual need is the European Convention on Human Rights, as set out in section 4 of the Coronavirus Act. The Care Act power remains in place (sections 19 and 20) to meet any needs that the local does not have a duty to meet, and the guidance strongly suggests that this power is used: “Local Authorities will still be expected to take all reasonable steps to continue to meet needs as now.”
6. Each local authority has the discretion to decide how assessments and care planning should be undertaken. The emphasis is on ensuring that “paperwork, bureaucracy and process kept to a minimum”. Although the Coronavirus Act removes the duty to provide a care and support plan, the guidance states that providers should “receive enough information to develop a care plan with the person” and that it should include the following:
 - a) “an overview of the person’s wishes and feelings, and outcomes that need to be considered and achieved”
 - b) “information on key aspects of daily living, personal care, nutrition and hydration needs as well as any other medical conditions”

- c) “specific care needs that the provider will need to consider” e.g. “communication, mobility, and behavioural, cognitive and mental health needs”
 - d) “any safeguarding concerns and risk assessments”.
7. There is no longer a duty to review care and support plans and the intention is that care packages and associated direct payments “can be varied without review to ease administrative burdens on the workforce”. However, if a local authority chooses to revise the plan “they should continue to involve people who use services, and carers in decisions about revising their care package”, because the sections of the Care Act that pertain to this remain in force. Also local authorities are advised that they should “should continue to comply with pre-amendment duties under s27 as far as it is reasonably practicable to do so”. For example, the duty in s27 (5) to “take all reasonable steps to reach agreement with the adult concerned about how it should meet those needs” is removed, but should therefore be complied with unless this is not practicable.
 8. In addition to streamlining local authorities can also opt to change priorities for care and support. This means making decisions about “who is most in need of care”, and also local authorities can decide “who might need to have care and support temporarily reduced or withdrawn in order to make sure those with highest need are prioritised”, for example “where a Local Authority is faced with a decision about reducing personal care for one person so that another gets the help they need to eat”.
 9. Further clarification is emerging through the Adult Social Care Covid-19 Forum e.g. Fran Leddra (DHSC Chief Social Worker for Adults) commenting on the streamlining stage stated: “The easements free up staff in relation to new assessments, support planning etc but at this stage most people will continue to get their care and support needs met as before”. She also stated in relation to the prioritisation stage “we would hope it would never come to this”.
 10. This guidance is intended “to provide a helpful tool for ASC when considering how to prioritise care and support”. It suggests that care packages make a distinction between “High, Moderate and Low (or similar terminology)” in terms of the level of funding to be made available, but it adds that the “Department does not propose to advise local areas on how to prioritise as methods of prioritisation will be unique to each area”. However, it makes it clear that it “is vital professional judgement and oversight is used” and that “professional leaders such as Principal Social Workers... should... help develop, agree, and review locally agreed processes that would be informed by this guidance”.
 11. There are two important points to note about financial assessment and charging:
 - a) “Local Authorities will not have to carry out financial assessments in compliance with pre-amendment Care Act requirements”.
 - b) “They will, however, have powers to charge people retrospectively for the care and support they receive during this period”.
 12. What hasn’t changed are safeguarding duties, although there is a caveat that it is “important that safeguarding teams are proportionate in their responses and mindful of the pressure social care providers are likely to be under”. The guidance also adds that where “people decide to cancel or suspend their own care and support”, there could be “concerns that this may lead to unmanageable risk or safeguarding issues”.

13. There are some sections of the Care Act that may be technically not applicable, but are being retained via the Care Act easements guidance. For example, the guidance envisages that personal budgets and direct payments will continue, as follows: “Decision-making about personal budgets, including direct payments, and care plans should be kept as close to the front line as possible with minimum restraints on flexibility and innovation in how needs can be met.” It is stated that “further guidance on Direct Payments will be published”, so no doubt this will be clarified.

‘Responding to Covid-19 – the ethical framework for adult social care’: relevance to the easement guidance for social workers

1. The easement guidance states that this ethical framework “provides a structure for Local Authorities to measure their decisions against and reinforces that the needs and wellbeing of individuals should be central to decision-making”. In the introduction to the ethical framework it states that it is “aimed at planners and strategic policy makers” with the intention of supporting “the work of professionals and others in the health and social care workforce who are developing policies and responding to the outbreak, in line with their own professional codes of conduct and regulations.”
2. It sets out eight values and principles and outlines what they mean for adult social care. The headings are: Respect, Reasonableness, Minimising harm, Inclusiveness, Accountability, Flexibility, Proportionality and Community. Statements within each of these headings that are especially relevant for social workers are as follows:
 - Strive to support people to get what they are entitled to, subject to available resources, ensuring that there is a fair judgement and clear justification for any decisions made on prioritisation
 - Use a clear, fair decision-making process which is appropriate for the time and context a decision must be made in, and allows for contributions to be considered seriously
 - Being transparent about how and which decisions need to be made and on what basis
 - Being prepared to justify which decisions are made and why, ensuring that appropriate records are being kept
 - Provide people with as much opportunity as possible to challenge decisions that affect them in the time that is available
3. The ethical framework makes particular reference to the importance of professional judgement in prioritisation decisions:
 - a) “In particular it should underpin challenging decisions about the prioritisation of resources where they are most needed”
 - b) “It is crucial that Local Authorities are able to evidence their decision, demonstrate their professional judgement, apply the Ethical Framework for Adult Social Care, and where necessary, record that they have considered the Convention Rights”. [n.b. this section is repeated in the easement guidance]

Preliminary analysis and comment

1. What follows are some initial views, but it should be noted that these may change as BASW England engages in dialogue with members and colleagues in other adult social care organisations and further information and advice is published – particularly the transcripts of the Adult Social Care Covid-19 Forum (the first of which took place on 8/4/20).
2. Given the necessary speed with which this guidance has been developed and published it is understandable that it did not address a number of key issues. It provides a useful starting point, but BASW England believes there is considerable scope for further guidance to be provided either by the DHSC or other organisations such as BASW, PSW Network, ADASS and SCIE.
3. BASW England is concerned about the lack of guidance about process other than the requirement that a local authority “should still assess people’s social care and support needs... and should make a written record of this assessment”. The stated intention in the Explanatory Notes to the Coronavirus Bill was that the guidance would include support for local authorities in “making prioritisation decisions in a consistent, and ethical manner”. Although work has been done on developing an ethical framework that helps to guide decision-making, there is arguably a need for further guidance to ensure operational consistency and transparency. In particular there is concern about the lack of guidance on the duty to apply the ECHR, and the lack or recognition that this is an issue.
4. It is welcome that “monitoring of the easements is being considered” as stated in the Adult Social Care Covid-19 Forum. However, we are concerned with the response to the following question at the forum: “In light of the Care Act easements guidance on prioritisation not being detailed, how is the Government going to ensure that councils prioritise people’s needs appropriately if the easements are switched on? How will they monitor this and ensure that councils’ prioritisation is also transparent?” The response was “this may not be an area to monitor”.
5. BASW England is concerned where local authorities apply the easement guidance, there may be not be a local framework within which social work professional judgements can be clearly and transparently located. We think that such a framework should be developed that adapts what has evolved from the application of the Care Act. There will always be a tension to be managed between the professional judgements of social workers about meeting people’s needs, and ensuring that the policy requirements of the employing body are adhered to. The Care and Support Statutory Guidance that accompanies the Care Act, provides a framework that aims to manage this tension in a fair and balanced way, and aims to be easily understood by service users and carers. Of course many social workers have ethical concerns about the application of this framework, but without a replacement we believe that ethical dilemmas will be exacerbated.
6. We welcome the publication of ethical framework by the DHSC and note that it is aimed at those “who are developing policies and responding to the outbreak, in line with their own professional codes of conduct and regulations”. In the current circumstances it is important that BASW England responds by considering the implications for the BASW Code of Ethics for Social Work, particularly in relation to professional judgement.
7. The DHSC has stated that there will be future iterations of the guidance, which will hopefully provide clarity on issues such as prevention, independent advocacy and supported self-assessment.

8. BASW England intends to develop further analysis and proposals for how these concerns can be addressed.

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