

Supporting Adult VoTs under Care Act 2014

- **Purpose of Care Act:** to provide care and support to adults with need for care and support (not the same as ‘vulnerable adults’)
- **General principles:**
 - **Promoting 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 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.
 - **Preventing needs for care and support:** arrange services which (a) contribute towards preventing or delaying development by adults of needs for care and support; (b) reduce the needs for care and support of adults in its area;
- **How?:** by assessment where it appears to a local authority that an adult may have needs for care and support: section 9(1).

Support under Care Act 2014 (2)

- **What to assess: (section 9(5))**
 - the impact of the adult's needs for care and support on the matters specified in section 1(2),
 - the outcomes that the adult wishes to achieve in day-to-day life, and
 - whether, and if so to what extent, the provision of care and support could contribute to the achievement of those outcomes.
- **Who is eligible?: Reg 2, Care Act (Eligibility Criteria) Regulations 2015:**
 - their needs must be the result of a physical or mental impairment or illness;
 - as a result they must be unable to achieve two or more specified outcomes (under regulation 2(2));
 - as a consequence there is (or there is likely to be) a significant impact on their well-being.

Support under Care Act 2014 (2)

- **‘Unable to achieve’?: Para 6.106 Care Act statutory guidance where adult:**
 - is unable to achieve outcome without assistance: including where need prompting. E.g., adult may be physically able to wash but need reminding of importance of personal hygiene;
 - is able to achieve outcome without assistance but doing so causes the adult significant pain, distress or anxiety: E.g, adult may be able to prepare a meal but would leave them in pain and unable to eat meal;
 - is able to achieve outcome without assistance, but doing so endangers or is likely to endanger the health or safety of the adult, or of others: E.g., if health or safety of others could be endangered when an adult attempts to complete a task or an activity without relevant support;
 - is able to achieve outcome without assistance but takes significantly longer than would normally be expected: E.g., adult with physical disability is able to dress themselves in the morning, but takes a long time to do this, leaves them exhausted and prevents them from achieving other outcomes.

Supporting Adult VoTs: Is Localism Act a fallback?

- **Section 1(1):** power to do “*anything that individuals generally may do.*”
- **Section 1(5):** power not limited by existence of other powers which overlap with it
- **Section 2:** “*boundaries*” of general power only where expressly stated
- ***R (J) v Enfield LBC [2002] EWHC 432 (Admin):*** predecessor provision s2, Local Government Act 2000 (‘LGA 2000’) describes as extremely wide and “*is capable of extending to the grant of financial assistance for acquiring accommodation.*” (Dicta endorsed by Sedley LJ in *R (Morris) v Westminster City Council [2005] EWCA Civ 1184* at [65].
- ***R (AK) v Bristol City Council (CO/1574/2015):*** consent order affirms s2 LA 2011 does not prevent support and assistance from being provided to victims of trafficking to avoid a breach of Article 3 and 4, ECHR and / or to comply with Article 11, EU Directive.

Supporting Adult VoTs: Is Localism Act a fallback?

- ***R (P) v Royal Borough of Kensington and Chelsea (CO/3411/2016)***: use of s1 LA 2011 with safeguarding obligation under section 42, Care Act 2014 to secure accommodation and support for EEA national VoT with no residence permit (because of failure of HO to consider grant) to avoid breach of Article 3 and 4, ECHR and / or to comply with Article 11, EU Directive.
- **Section 42, Care Act 2014**: duty to conduct a safeguarding enquiry in respect of any adult who (a) has needs for care and support; (b) is experiencing, or is at risk of, abuse or neglect, and (c) as a result of those needs is unable to protect himself against the abuse or neglect or risk of it.
- **Post-Modern Slavery Act 2015**, guidance makes clear that modern slavery - including human trafficking and use of “*whatever means ... at their disposal to coerce, deceive and force individuals into a life of abuse, servitude and inhumane treatment*” fell within the safeguarding enquiry duty under s42, Care Act 2014: see para 14.17 of the Care Act guidance.

Do legislative / regulatory measures meet Article 11 for Adult VoTs?

- **Answer: No.**
 - Failure to issue regulations: section 50, Modern Slavery Act 2015
 - Failure to implement duty to issue stat guidance: section 49, MSA 2015
 - Current framework inadequate because:
 - definition of ‘need for care and support’ not easy fit for VoTs b/c focus on personal care
 - VoTs not inherently accepted as requiring care and support. Contrast with NRM support
 - Accommodation via Care Act cannot be assumed. For those with mental health issues, only be provided where MH support would be “effectively useless” without a home: *SL v Westminster CC* [2013] 1 WLR 1445
 - Exclusion from support based on immigration status: schedule 3, Nationality Immigration and Asylum Act 2002
 - Localism Act is power not duty to support

Case Study - Alexandru

- **Facts are a composite set of facts from various cases.**
- Alexandru is a Romanian national with convictions offences for petty offences in Romania. He was trafficked to the UK in November 2015 and made to work in factories. He escaped his trafficking situation in May 2016 and was street homeless for a month but then was referred into the NRM by the Police. Following a positive reasonable grounds and conclusive grounds decision he received support and accommodation in a safe house.
- In December 2016 the Home Office notified of an intention to deport him because of historic offences. A deportation order was served on him. He was picked up from the safe house and detained under immigration powers with an intentin to remove him to Romania.
- Alexandru appealed out of time. The FTT extended time for his appeal. The Home Office cancelled removal directions, agreed not to remove him pending appeal but refused to release him.

Case Study - Alexandru (cont'd)

- Alexandru made an application for Section 4 support but this was refused because the Home Office decided that, relying on Schedule 3(1) and (5) of the Nationality Immigration And Asylum Act 2002, as an EU national he was not entitled to s.4 support.
- Whilst in detention Alexandru's mental health started to deteriorate. He began to have significant bouts of paranoia, depression and anxiety. He had to have treatment from the healthcare unit in the detention centre and was prescribed anti-depressants. He also received strong pain relief for a back injury.
- An immigration officer came to see Alexandru and told him that it was his responsibility to find suitable accommodation and that he could not be released unless he had an address.
- Alexandru desperately wants to get out of the detention centre.

Case Study - Questions

- Can Alexandru approach the local authority for support under the Care Act 2014?
- Can he approach the local authority for support under the Localism Act 2011?
- If he had approached the local authority when he was street homeless in May/June 2016 do you think that he could have secured accommodation under the Housing Act 1996 as a homeless person?
- Are the Home Office right to say that he cannot get s.4 support because he is an EEA national?

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THANK YOU!

