

Chapter 12: The legislative framework for the provision of adult social care and support

1. Considering the cases referred to in the chapter, what difference, if any, do you think that the implementation of the Care Act 2014 has made to those cases.

As we point out in the text, the Care Act 2014 does not change the challenges that face local authorities. The Act, as we shall see, places great emphasis on the well-being of individuals, and the need to tailor services to their needs. If individual well-being is continually compromised by lack of funding, the aspirations of the Care Act 2014 will not be achieved.

The best way to answer the question is to look at the outcome of recent cases.

So for instance you can look at the case of *R (on the application of VI) v Lewisham*, a judicial review from 2018, which indicates that little has changed. Here the Claimant was a 55-year-old woman with muscular dystrophy, who was bed and wheelchair-bound and required carer support for all personal care. The challenged assessment, which was issued in draft form on 7 February 2018 and finalised on 27 March 2018 ("the assessment"), confirmed a reduction in her care package from 104 hours to 40 hours of care per week which in practice had occurred in August 2017. The Claimant argued that the assessment was irrational, and/or unlawful in that it failed to comply with the Care Act 2014 and associated regulations, because:

- i) the Defendant's conclusion that the Claimant's needs for care and support could be met through a reduction of over 50% in her carer hours was irrational. The Claimant's condition is degenerative and cogent reasons were therefore required for concluding that her care needs had reduced from the previously assessed level. The basis on which the Defendant asserts that the Claimant's needs had hitherto been 'over-provided' was seriously flawed;
- ii) the assessment failed to give proper consideration to the factors in section 9(4) of the Act, including the wellbeing factors in section 1(2) ;
- iii) the Defendant failed to have regard to the need to prevent additional care needs arising through deterioration in the Claimant's mental health and physical wellbeing (section 1(3));
- iv) the assessment failed properly to assess the Claimant's care needs against the eligibility outcomes as set out in regulations made under the Act; and
- v) the Defendant failed to cooperate with NHS services, particularly with occupational therapy and physiotherapy, in assessing the Claimant's needs and the best way to prevent care needs arising in the future.

Despite the references to the Care Act, the High Court judge rejected the claim. He accepted that the reduced care hours would have to be carefully monitored, but considered that the assessment, which reduced the hours so dramatically, was not unlawful.

The case that we discussed at the beginning of the *chapter R (on the application of D) v Oxfordshire County Council (2017)* which was the first case that the Court of Appeal decided on cuts to care packages since the implementation of the Act confirms this. The judge in the High Court, in an approach upheld by the Court of Appeal reached a decision, post the Care Act 2014, very similar to decisions that would have been made prior to the implementation of the Act despite the centrality in the Act of a service user's well being. What was important here was that Oxfordshire County Council was able to demonstrate that it had followed due process and paid sufficient regard to the views, wishes and feelings of the claimant. This does not necessarily accord with doing what the claimant wants.

**2. Why was the costs cap within the Care Act not implemented?
How do you think care should be funded?**

The principal reason for not implementing the costs cap was that it was regarded as unaffordable. The argument was that whatever funding was available it should be used to fund existing care packages, rather than providing relief from additional costs. A green paper has been promised which will look at the costs of social care with the aim of producing a sustainable social care system. This paper has been postponed on several occasions; now it is promised at the first available opportunity in 2019. For further background to the promised green paper see <https://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-8002#fullreport>

3. Some years ago, your department provided John, who is disabled, with a radio following an assessment of his needs under s. 2 of the Chronically Sick and Disabled Persons Act 1970. John's ability to hear the radio has now declined. What provisions in the Care Act 2014 enable you to provide John with an audio-headphone?

One of the purposes of the Care Act 2014 was to avoid the specificity of previous legislation. Section 1 of the Act, promoting individual well being, provides you with the necessary statutory authority, although of course John will have to have his needs assessed.

4. Why did the Coronavirus Act 2020 make the changes it did to the Care Act 2014? Were the changes necessary? What do you think their consequences have been?

The changes were made because of central and local government concerns of a double whammy. Social workers and care workers would be sick and there would be a massively increased demand for services. The limited use made of the easements might suggest that the changes were not necessary. It will not be until reports are produced by the Local Government Ombudsman that we will see whether there was extensive cuts to services. It will be interesting to hear what your experiences have been.