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Meet the author

Pete Feldon is a freelance Care Act consultant and trainer. He has a background of working in many sectors of social care as a social worker, trainer, manager and policy developer. He was a member of the team that developed learning materials for the Care Act for Skills for Care. He currently provides Care Act training for local authorities and universities.

As a member of the BASW Adults Group he has been involved in writing guidance on the impact of constrained resources on the application of the Care Act, and also advising other organisations on social work and the Care Act.

He has written articles on the Care Act published in Professional Social Work, and also The A–Z of the Care Act 2014 for Community Care Inform.
Introduction

This chapter describes what the legislation has to say about the role of social workers and outlines the circumstances where professional judgements made by social workers will be relevant.

The references to relevant judgements occur in each of the sections of the care and support planning pathway, and there isn’t a single list of the judgements that may need to be made. As would be expected the components of professional social work judgement are not articulated in the statutory guidance, as this is a matter for professional bodies, the regulator and employers.

This chapter outlines the judgements where social workers have a significant role. It is comprised of what is stated in the legislation about:

- social workers and the roles they could undertake;
- where judgement is applicable.

The application of these judgements is a key component of the chapters that follow.

Finally, the status of professional judgement is considered with reference to Social Work England and BASW (British Association of Social Workers).

The legislative mandate for role of social workers

The statutory guidance sets out a number of roles that social workers should undertake and others that they could undertake, but the only role where there is a clearly stated duty to employ a registered social worker is that of principal social worker (see paragraphs 1.27–1.31).
The only reference to social work in the Care Act is in section 8 (1), which states: “The following are examples of what may be provided to meet needs under sections 18 to 20... (c) counselling and other types of social work”.

The statutory guidance identifies relatively few roles that are to be undertaken exclusively by social workers. Mostly social workers are referred to alongside occupational therapists or included within the generic term of ‘professional’.

Social workers are referred to alongside other professionals, as follows:

- Paragraph 2.22 refers to social workers and other professionals “who are effective at preventing, reducing, or delaying needs for care and support... (including) consideration of a person’s strengths and their informal support networks as well as their needs and the risks they face”.

- Paragraph 6.7 states: “Registered social workers and occupational therapists can provide important support and may be involved in complex assessments which indicate a wide range of needs, risks and strengths that may require a coordinated response from a variety of statutory and community services. Or they may be involved at the point of first contact to advise on whether preventative services would be more appropriate at that time.”

- Paragraph 6.27 states: “Staff who are involved in this first contact must have the appropriate training and should have the benefit of access to professional support from social workers, occupational therapists and other relevant experts as appropriate, to support the identification of any underlying conditions or to ensure that complex needs are identified early and that people are signposted appropriately.”

- Paragraph 6.84 states: “Assessments can be carried out by a range of professionals including registered social workers, occupational therapists and rehabilitation officers.”

- It is recognised in paragraph 10.33 that “one-to-one support from a paid professional, such as a social worker” is one of the choices available to a person to meet their needs.

- Where a care and/or support plan is being developed by someone other than a social worker “the local authority should ensure... that there is... access to social work advice” (paragraph 10.35).

- Paragraph 10.41 states that local authorities “should have regard to how universal services and community-based and/or unpaid support could contribute to the factors in the plan, including support that promotes mental and emotional wellbeing and builds social connections and capital”, and this “may require additional learning and development skills and competencies for social workers and care workers”.

- In agreeing the level of involvement of the individual in developing their care and/or support plan, paragraph 10.50 states: “Social workers or other relevant professionals should have a discussion with the person to get a sense of their confidence to take a lead in the process and what support they feel they need to be meaningfully involved.”
• Paragraph 13.16 states: “There should be a range of review options available, which may include... face to face reviews with a social worker or other relevant professional.”

• In relation to reviews where “a person is recorded as having a mental impairment and lacking capacity to make some decisions... making appropriate use of a social worker as the lead professional should be encouraged” (paragraph 13.17).

The only significant reference to social workers having an exclusive role is in relation to safeguarding. Paragraph 14.81 of the statutory guidance states:

• It is likely that many enquiries will require the input and supervision of a social worker, particularly the more complex situations.

• Where abuse or neglect is suspected within a family or informal relationship it is likely that a social worker will be the most appropriate lead.

Social workers are identified in this paragraph as having the skills to handle “enquiries in a sensitive and skilled way to ensure distress to the adult is minimised”.

The only other references to activities that are identified as exclusively for social workers are as follows:

• recovering debt incurred as a result of charges levied for the provision of care and support (see Annex D, sections 12 and 14);

• with reference to transition assessments paragraph 16.16 states: “Social workers will often be the most appropriate lead professionals for complex cases.”

The most frequent reference to social workers is where there is complexity. This can be where an individual’s needs are complex and/or their circumstances are complex.

**References to judgement**

There are several explicit references to judgement in the statutory guidance that are of relevance to social workers, and one in the Care Act.

In fact, the Care Act reference isn’t about a judgement that social workers make, but one that they must take into account. Section 3 (a) states: “In exercising a function under this Part in the case of an individual, a local authority must have regard to the following matters in particular—

(a) the importance of beginning with the assumption that the individual is best-placed to judge the individual’s well-being”.

The significance of this section is explored in later chapters and there is case law to assist with its interpretation.

The references to judgement in the statutory guidance are in relation to prevention, eligibility determination, people who have difficulty in making decisions and responding to requests for a review.
There are no judgements specified for the core process of assessment, other than in relation to prevention. Paragraph 6.61 states: “In parallel with assessing a person’s needs, local authorities must consider the benefits of approaches which delay or prevent the development of needs in individuals”. It then adds: “Where the local authority judges that the person may benefit from such types of support, it should take steps to support the person to access those services” (paragraph 6.62).

One of the purposes of a needs assessment is to contribute to eligibility determination, and it is clear that this is a judgement in the following statement: “In all cases, the authority must inform the person of their eligibility judgement and why the local authority has reached the eligibility determination that it has” (paragraph 6.53).

There are references to people who lack capacity or have substantial difficulty in making decisions, as follows:

• “Professionals and other staff need to understand and always work in line with the Mental Capacity Act 2005 (MCA). They should use their professional judgement and balance many competing views” (paragraph 14.56).

• “At the start of the assessment process, if it appears to the local authority that a person has care and support or support needs, and throughout any subsequent part of the process, the local authority must judge whether a person has substantial difficulty in involvement with the assessment, the care and support planning or review processes” (paragraph 7.18).

In responding to a request for a review “the local authority must consider this and judge the merits of conducting a review” (paragraph 13.23). In most circumstances a review will go ahead, but there are specified circumstances that allow for a judgement not to do so.

Professional judgements that social workers make

The statutory guidance doesn’t intend to give a comprehensive account of how social work knowledge and skills should be applied in making professional judgements about key elements of the Care Act. This is a matter for the social work profession.

What follows outlines the key decision-making areas set out in the statutory guidance where professional social work judgement is required (in the opinion of the author). Case law on professional judgement is considered in Chapter 12.

The judgements referred to in the previous section broadly identify three areas where social workers would regard their professional judgements as being crucial:

• preventing, reducing, or delaying needs for care and support;
• eligibility determination;
• substantial difficulty in involvement.

One further area where judgements have to be made is in relation to deciding on what resources the local authority will agree to allocate to meet an individual’s eligible needs.
When deciding on the personal budget to meet needs this “must be an amount which is sufficient to meet the needs the local authority has a duty or power to meet” (paragraph 12.25).

Each of these four areas are outlined in this section and explored in more detail throughout the book.

**Preventing, reducing, or delaying needs for care and support**

There are three interrelated aspects of prevention referred to in the statutory guidance where social work knowledge and skills are particularly applicable and professional judgement is required, as follows:

- strengths and capabilities;
- support from the individual’s wider network and community;
- developing social capital.

These elements of prevention are to be taken account of in the assessment stage, eligibility determination and in developing the care and/or support plan.

Paragraph 6.2 states an assessment can “help people to understand their strengths and capabilities, and the support available to them in the community and through other networks and services”. This is seen as a “critical intervention in its own right” (paragraph 6.2). The purpose of assisting people to develop this understanding at the assessment stage is twofold:

- “Identify needs that could be reduced, or where escalation could be delayed, and help people improve their wellbeing by providing specific preventive services” (paragraph 6.61);
- “Consider what else other than the provision of care and support might assist the person in meeting the outcomes they want to achieve” (paragraph 6.63).

This is explored in Chapter 4.

Eligibility determination is “based on the remaining needs” (section 6.62) which have not been met through preventive interventions, so it is important that any benefits of prevention are realised where possible before considering whether the person has any eligible care and/or support needs (see Chapter 5).

In developing a care and/or support plan the statutory guidance states that “needs may be met through types of care and support which are available universally, including those which are not directly provided by the local authority” (paragraph 10.41). The intention is to signal the importance of what this paragraph describes as “support that promotes mental and emotional wellbeing and builds social connections and capital” (see Chapter 8).
Eligibility determination

Social workers play a vital role in interpreting the eligibility framework. The essential features of the framework are relatively straightforward to understand, but the circumstances of adults and carers to which it is applied are complex. The skill of the social worker lies in ensuring that the complexities of an individual’s circumstances are reflected in the application of the framework.

In making the judgement about whether an individual has eligible needs there is a considerable amount of detail set out in the Act, regulations and statutory guidance that social workers need to know how to interpret and apply. But when it comes to the final stage of eligibility determination, deciding on whether there is consequential significant impact on wellbeing, the statutory guidance is necessarily imprecise. This is in part because the term ‘significant’ cannot be defined in law and as paragraph 6.109 states it “must therefore be understood to have its everyday meaning”, but it is also reasonable to assume that it was concluded that good practice can only develop over time and that any further statutory guidance would have been too constraining.

This is explored in depth in Chapter 5.

Sufficiency of the personal budget

Social workers have a key role in ensuring that the personal budget is sufficient to meet the individual’s care and support needs. But they are also expected to represent the interests of the local authority in ensuring that ways of meeting needs at no cost to the local authority are fully utilised, as well as helping people to understand that the local authority can only pay what is the ‘cost to the local authority’ to meet agreed needs.

The professional skill is in being able to achieve a balanced approach where there is tension between these requirements. Sometimes this will involve advocating for the individual where the indicative budget is not sufficient to meet their needs, but it can also mean helping individuals to understand and accept a plan that is less (both in scope and funding) than they had hoped for.

The bottom line is that the personal budget must be sufficient to meet needs. Chapter 8 sets out how various elements of the statutory guidance can be brought together and how social work professional judgement can be applied.

Substantial difficulty in involvement

Making the judgement about whether an individual has substantial difficulty in involvement is set out in the Care Act in section 67(4). There are situations where the difficulty is very evident, there will be many where it will not be clear whether the criteria apply, hence the need for professional judgement.

The statutory guidance gives no indication about where to draw the line in making this judgement about whether a person is experiencing substantial difficulty. It could be
argued that there are some similarities in the challenge of judging what is ‘substantial’ to that of judging what is ‘significant’ (as in ‘significant impact on wellbeing’), in that good practice can only develop over time and that any further statutory guidance would be too constraining.

The status of social work professional judgement

As a postscript to what is set out in the legislation, this section briefly outlines some references that underpin and support professional judgement.

Social Work England refers to professional judgement in the Guidance on the Professional Standards as follows:

“Using an evidence-informed approach to make impartial decisions is an integral part of social work practice. Social workers will listen to people, without bias or prejudice, and use evidence from assessments, alongside social work theories, models and research to apply their professional judgement.”

BASW England has produced guidance on how to apply the Code of Ethics for Social Work to Care Act decisions about resource allocation entitled An Ethical Approach to Meeting Needs in Adult Social Care. It states that it “outlines how social workers can use the BASW Code of Ethics for Social Work to assert their professional judgement where there are concerns that financial pressures are leading to unjust decisions, and the needs of people who require care and support being unmet and under-met.”

The legal status of professional judgement is considered in Chapter 12.

Conclusion

The Care Act 2014 and the associated Regulations and the Care and Support Statutory Guidance provide a policy framework that, in the author’s opinion, is largely in accord with good social work practice.

Although this legislative framework has brought clarity to many areas of adult social care, it has also set out so as to allow for good practice to evolve. There are many areas where the framework is detailed and prescriptive, such as eligibility determination. But much of the framework is deliberately less prescriptive. Both the well-developed aspects of the system and the necessary uncertainties can benefit from elucidation to assist social workers in applying the Care Act, and this book aims to do that.

This second edition takes into account developments in case law and what is known about how the legislation has been applied. However, there has been very little research so far into how social workers apply their professional judgement. Judicial reviews and Ombudsman decisions have helped to clarify the nature of professional judgement to an extent, but there is plenty of scope for guidance on making professional judgements in adult social care to be developed. This is discussed in Part IV of the book.
Social workers play a vital role in interpreting the Act, regulations and statutory guidance for people with care and/or support needs. Much of the legislation is complex, and the circumstances of the adults and carers to whom it is being applied are also complex. The skill of the social worker lies in ensuring both that the complexities of an individual’s circumstances are addressed in accordance with a local authority’s duties and powers, and making sure that the individual experiences the relevant processes as straightforwardly as possible. To achieve this social workers must rely on their professional knowledge and skills to interpret the Act, regulations and statutory guidance and use their professional judgement in making decisions where required.

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