

# Community Care Legal Duties

Social care services are governed by legislation and government guidance, which we must follow.

## Assessments

Local Authority's duties are set out in:

### NHS & Community Care Act 1990 – Section 47(1):

The Local Authority has a duty to carry out an assessment of need for community care services where a person appears to be someone for whom community care services could be provided, AND a person's circumstances may need the provision of some community care services.

### Section 47(2):

If the Section 47(1) assessment identifies a person as being disabled, that person has additional rights as set out in Section 47(2) which requires local authorities to decide as to the services required under the...

### Disabled Persons (Services and Consultation and Representation) Act 1986 – Section 4:

We must decide whether the needs of a disabled person require any services provided under...

### Chronically Sick & Disabled Persons Act 1970 – Section 2(1):

We must assess the needs of people who fall within the...

### National Assistance Act 1948 – Section 29(1):

Which defines a 'disabled person'.

## Carers Assessments

### The Carers & Disabled Children Act 2000 – Section 1:

Gives carers, aged 16 or over, who are caring for a service user aged 18 or over, the right to an assessment (independent of that of the service user) of their ability to provide, or continue to provide, care.

### The Carers (Recognition & Services) Act 1995:

Gives carers not covered by the CDCA 2000, i.e. of any age, the right to an assessment when the service user is assessed.

### Disabled Persons (Services Consultation & Representation) Act 1986 – Section 8:

We must consider the ability of the carer to provide care when deciding what services to provide.

### Carers (Equal Opportunities) Act 2004:

We must inform carers of their rights to assessment under the CDC Act 2000 and the C(R&S) Act 1995.

## Mental Health

### Mental Health Act 1983, Section 117:

Requires an Approved Social Worker to assess a person's mental health, along with key health colleagues, when providing aftercare services for people leaving hospital after being compulsorily detained.

### Sections 2, 3, 4 and 7:

Requires an Approved Social Worker to assess the person's mental health along with key health colleagues.

## Safeguarding Adults

### Mental Capacity Act 2005:

Requires statutory agencies to follow an assessment and "best interests" practice framework in relation to people who may lack capacity to make key life decisions, particularly in relation to health, social care and finance. Requires local authorities (LAs) to commission Independent Mental Capacity Advocacy (IMCA) services to support "un befriended" people who have been assessed as lacking capacity regarding particular health and social care decisions.

Requires PCTs and LAs to manage Deprivation of Liberty Safeguards (DoLS), where hospitals and care homes are seeking authorisation for practice which might otherwise be regarded as a Deprivation of Liberty. Other duties relating to Safeguarding Adults are in Devon's Safeguarding Adults Policy available online:

[www.devon.gov.uk/draft\\_safeguarding\\_adults\\_jan\\_07\\_without\\_policy.pdf](http://www.devon.gov.uk/draft_safeguarding_adults_jan_07_without_policy.pdf)

(Safeguarding Adults Policy Summary to follow.)

## Eligibility

FACS (Fair Access to Care Services) identifies whether a person has 'eligible needs' for funded social care services. If Eligible Needs are within the laws relating to a duty on Social Services to provide services, then they must be met. How they are met is a separate issue.

## Providing Services

### National Assistance Act 1948 – Section 21(1):

We have a duty to provide residential accommodation to some adults over 18 years who through age, illness, disability or any other circumstances are in need to care and attention which would otherwise be unavailable to them.

### Section 29:

We have a duty to provide social work advice and support service and facilities for:

- Rehabilitation and adjustment to disability
- Occupational, social, cultural and recreational activities.

### Chronically Sick & Disabled Person's Act 1970 – Section 1:

We must provide information about relevant services.

### Section 2(1):

This sets out the range of services we should provide to meet the needs of 'disabled people' including practical help in the home; providing meals; access to recreational facilities outside the home; help to take advantage of educational facilities; and help with work for adaptations to the home.

### National Health Services Act 1977 – Section 21:

Services may be provided for expectant mothers. Schedule 8 identifies the power to provide support for people with alcohol and drug problems.

### Mental Health Act 1983 – Section 117(2):

There is a joint duty on Health and Social Services to provide after care services for ex-patients such as accommodation problems, family relationships, and the provision of domiciliary services and day centres.

### Community Care (Direct Payments) Act 1996:

We are required to offer cash payments for any community care services to all individuals to meet assessed eligible needs of disabled people aged 16 or over or who have parental responsibility for a disabled child or who is a carer aged 16 or over. Individuals must have been assessed as being willing and able to manage Direct Payments (either alone or with support).

### The Carers & Disabled Children Act 2000 – Section 2:

We can provide services such as physical help, training or counselling for carers.

### Section 5:

Extends Direct Payments to carers aged 16 years or over who care for a person aged 18 or over.

### Health Services Act 1968:

We have a power to arrange services to promote the welfare of older people.

### Community Care (Delayed Discharges) Act 2003:

Requires Local Authorities to make payments to NHS bodies where a persons discharge from hospital is delayed because care services or services to carers have not been provided.

Requires NHS Hospitals to notify Local Authorities of anyone who is likely to need community care services when they are discharged from hospital.