

UNVEILING THE TRUTH ABOUT SOCIAL CARE IN ENGLAND



PART ONE

How Barnet Council is flouting the law and deceiving their residents so it can put resource before need

Barnet Forum for Independent Living
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Source Materials:

There are links throughout this report to different sections of our source materials document. Here is a link to the full document. https://docs.google.com/document/d/1vpBqYsl9wkfqUUJghNa9njXyuBBghnJ/edit?usp=share_link&oid=104320144992098688455&rtpof=true&sd=true

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www.campaignrealcare.org

OVERVIEW

The Care Act 2014 was introduced with high expectations. It is still widely seen as the right legislation. It is also widely seen to have failed. Councils blame Government for insufficiency of funding. Government blames councils for failing to change their controlling, paternalistic cultures.

Sufficiency of funding and an empowering culture are essential if social care is to support people to live the best lives they can. However, this dossier shows that, in Barnet, neither is the fundamental reason for the Act's failure. Instead it is a policy choice. Barnet is directly breaching specific duties under the Care Act and has a blanket policy to not deploy key powers the Act gives it. They are, paradoxically, policies that mean Barnet will never have sufficient funding and never have the right culture.

This dossier is the first part of a three part exposure of the truth about social care in England. It is the result of a three year probe to get behind a fiercely protected façade of how the Council identifies need and plans support. The Forum worked in tandem with Labour when in opposition. There have been searching exchanges with the Director and the Council's legal adviser, discussions with senior operational staff, examination of policies and processes and of key strategic decisions. There have been attempts to engage the Council's officers and members in the need for change. All have been rebuffed.

A web of untruths is concealing how the Council is perpetuating the very practices that brought about the need for reform in the first place. They serve political expedients, but thwart morally driven political vision and ambition.



The untruths and the reality

The untruths create a 'glossy brochure' picture of a fair and ordered world. The real world is chaotic and unfair. For example:

- The Council says 'eligible' needs are always met because the budget is set accordingly. In reality, 'eligible' needs are indeed always met, but only because 'eligibility' is adjusted to the budget.
- The Council says a need is deemed 'eligible' if it meets the national criteria. In reality, a need is a need only if there is resource to meet it.
- The Council says it's the social worker who makes the eligibility decision. In reality, a senior manager, who has the information to know the level of demand the budget can support along with the necessary authority over the social worker, is put in a position to control their decision.
- The Council says people have *control* over their services and of their lives through the exercise of *choice*. In reality, the Council allows the person to say what they *want*, but decides what they *need* behind closed doors.
- The Council says the win-win of minimising demand by maximizing independence is secured through good practice. In reality, such practice is impossible when 'need' is calibrated to resources. The spectre of good practice is used as a pretext for unevidenced, arbitrary cuts to budgets.

In summary, Barnet is putting up a pretence of replicating the NHS founding principle that ***need precedes resource*** as the Care Act requires. When this principle is applied, the professional responsibility is to identify need and best means to meet it, and the political responsibility to find the resources thus identified as being required.

But the reality in Barnet is the reverse – ***resource precedes need***. This means the professional responsibility is to convert whatever resource political leaders happen to make available into ‘need’. Budgets are set by political leaders with no information as to the level of budget required for all to experience wellbeing as defined by the Care Act.

Political leaders have long uncritically accepted a process that expands and contracts ‘need’ to whatever budget they set. This keeps spending to their budget sufficiently well and allows them the illusion that their budgets leave no needs unmet and that there is no funding gap.

Barnet’s Labour in opposition played a central role in the development of this dossier. They took control of the Council in May, 2022 amidst high hopes. They made a Manifesto pledge to create *‘a new model of social care that puts the service user at its heart’*. However, once in power it has allowed the Council’s professional leadership to thwart their ambition on the premise that the existing model is not in need of change.

Part Two of *Unveiling the Truth* will show that Barnet is no rogue council. It is delivering a national template at the discreet behest of central government. Part Three will set out the evidence of the enormity of the human, moral and economic damage wrought by the template.

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- **Professor Alisoun Milne**, Emeritus Professor Gerontology and Social Work, Kent University
- **Don O'Neal**, is a tetraplegic and social care service user and author of the book *'Lack of Care Act: service users' perspectives of a failing adult social care system'*
- **Professor Michael Preston-Shoot**, Emeritus Professor of Social Work, Bedfordshire who has specialised in teaching social work and the law

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CONTEXT

In 2019, Barnet Council made a decision to take a large sum of money from its budget for reasons that attracted strong local criticism. The resulting challenge to the Council threw a spotlight on how the Council implements the Care Act. There followed three years of inquiry and challenge by ourselves¹ and the Labour opposition.

From written exchanges with key senior officers, discussions, a forensic examination of the Council's processes and policies and close examination of budget setting decisions, a substantial body of information has been compiled. It shows that, directly contradicting the Council's claims and in direct breach of the Care Act;

- the available resource determines what is considered to be 'need'
- budgets are set without knowing the needs of the community
- the assessment practices required to deliver the system disempower the individual.

The net effect is to perpetuate the pre-Care Act processes to ensure spend is within budget, but disregarding both the human cost and failure to make best use of money. The Council is rejecting the opportunity created by the Care Act to ensure spend is to budget in a different way which would positively promote wellbeing, in both the present and the future, as envisaged by the Act.

The following sets out the chronology of events, concluding with the key learning from them.

¹ *The Barnet Forum for Independent Living is a grass roots organisation of people whose lives are affected by social care and social workers. The Forum is committed to social care becoming a service that is authentically centred around the person, for all in need of care and support.*



CHRONOLOGY

A planned cut to the budget in 2019/20

1. The Council's Medium Term Financial Strategy (MTFS) for 2019/20, agreed by the full Council on March 5, 2019, included a plan to save **£424K** in the following way;

'The council will have due regard for use of resources when support planning to create more cost effective support plans. This will mean considering the full range of care options to meet eligible needs (e.g. residential care), rather than offering community-based placements (e.g. supported living) by default.'

The MTFS did not need to be consulted on for the following reasons;

'This is in line with the Care Act and does not require a specific consultation.'

In terms of 'impact on service delivery', the plan stated;

'We will continue to meet our Care Act duties through meeting clients' eligible needs. However, some clients and their carers /families may consider this change unfavourable if they have a preference for a community placement.'



2. The plan to end 'community by default' raised alarm amongst community groups led by the Barnet Alliance for Public Services (BAPS). In response to representations, officers sought to re-frame the strategy at a meeting of the Adults and Safeguarding Committee in September 2019 in the following way.

'The wording of the original proposal could have been improved. It is regrettable that the original wording has caused some misunderstanding about the intended proposal'

The 'improved' wording became;

'...when costs to support an individual in their home were likely to exceed the costs in a residential home, the worker undertaking the support planning with the individual considers residential care as well as community options. It remains the case that residential care would be the proposed option only if the person was exercising choice and in agreement with this approach.'

The wording was changed for a third time when the minutes of the meeting replaced the word 'choice' with 'consent'.

'no one can be moved from their home without their consent'

3. A Freedom of Information request was made to the Council for the information upon which the Council believed sufficient numbers of people would choose residential care rather than remain in their own homes to save £424K. The response stated that;

'Around 38 would have needed to choose to move into a residential or nursing setting as opposed to remaining at home.'

However, there was no information upon which to base the projection that **38** people would **choose** residential care in preference to support at home. The Council's response to the FOI request added:

'The calculations were based on 2017/18 data as this was the most recent full-year data at the time of writing the business planning report last year. Analysis was done to identify community placements that cost more than the average residential /nursing placement by client group. The total cost differential was £848k so 50% of this was the saving amount'

This shows how the plan was driven entirely financially.

The two sources of information were both financial;

1. the total saving to be made
2. the average saving to the Council if during 2017/18 a person went into residential care rather than support at home when it cost more than residential.

The division of one by the other gave the figure of 'around 38'

3. In summary, the Council had no information upon which to base their view that any single person, let alone **38**, would **choose** residential care rather than support at home. While people may **consent** to residential care if they believed they had no other option, it is absurd to suggest that anyone would freely choose institutional care over remaining in their own home. The loss of independence, identity and control can have a devastating impact on wellbeing. Further, residential care means facing substantially greater charges, including charges against capital assets such as the person's home if they own one.

The Council's legal advice

4. The Council's legal advice in relation to the MTFs plan was set out in the September 2019 report to the Adults and Safeguarding Committee. It supported the plan in the following terms;

'Whilst a local authority cannot take resources into account in assessing eligible needs, it is settled law that resources can be considered when considering the provision necessary to meet that identified eligible need (Regina v Gloucestershire County Council and Another, Ex Parte Barry: HL 21 Mar 1997).'

This advice fails to acknowledge changes brought about by the Care Act. Whilst the Statutory Guidance to the Care Act agrees resources can be taken into consideration when choosing the provision to meet need, it adds that;

'This does not mean choosing the cheapest option; but the one which delivers the outcomes desired for the best value.'²

Options that compromise outcomes affecting wellbeing is cost cutting. It is not cost effectiveness.

5. It was no surprise that at the mid year point the Council reported that the expected diversion of people into residential care was not happening. The Labour opposition responded by proposing to the full Council Committee that the £424K be restored to the budget. The Council rejected the proposal. Crucially. However, it did so without putting forward any alternative plan for how the savings would be achieved. The 'saving' remained out of the budget. This pointed to the Council having confidence that its business as usual processes being relied upon to deliver the savings regardless.

2 [Statutory Guidance, para 10.27](#)

The spotlight on how the Council conducted business as usual

6. The Labour opposition opened with an exchange of correspondence with the Council's legal adviser ([Source One](#)), Ms F. She was challenged on her advice as set out in the September 2019 report to the Adults and Safeguarding Committee. The question was put to her as to whether she agreed that section 9 of the Care Act had made the practice of *assessing for eligibility* unlawful. She was referred to a recent Court decision that addressed this point.

*'...if, in the course of a needs assessment, the local authority does not assess the matters specified in s.9(4) (including the impact on wellbeing matters set out in s.1(2)) then there is a breach of the statutory duty. There is, thus, a duty on the part of the local authority to assess these factors.'*³

Ms F evaded the question. In her answer, however, she used the phrase;

'When conducting an assessment under s9 for eligibility...'

Ms F. thus contradicted the above judgement. She conflated a section 9 *assessment of need* with the section 18 *determination of eligibility*. This revealed a belief, shown to be incorrect by the above and other authoritative judgements ([Source Two](#)), that section 9 concerned 'eligible' needs only. The Labour leader pressed Ms F again on whether assessing for eligibility was now unlawful. Ms F again failed to answer directly:

'Section (1), the general duty of a local authority, in exercising a function under this Part in the case of an individual, is to promote that individual's well-being. This applies to all the sections below.

Section 9 assessment of an adult's needs for care and support...'

3 [Davey v Oxfordshire, 2017](#)



7. Ms F's view appears to be that section 9 is satisfied merely by the promotion of wellbeing to any degree whatever, no matter how minimal the promotion of wellbeing might be. This is on the premise that the meeting of any 'eligible' need will, *de facto*, promote wellbeing. However, this fails to recognise that not all needs that have an impact on wellbeing and which call for the Council's care and support will be considered 'eligible'. An 'assessment for eligibility' may only address the smallest fraction of needs for wellbeing that call for council resources. Ms. F's view thus flatly contradicts the specific duty under section 9(4) to have regard to needs that have an impact on any of the nine areas of wellbeing that are relevant to the person and to whatever extent.
8. The failure to acknowledge that assessments under section 9 are broader than, and precede, decisions about eligibility also means the Council can never know the volume of needs that have an impact on wellbeing not deemed 'eligible'. It therefore disables itself from delivering the Care Act requirement, when setting budgets that determine the level of services available, to:

***'...have regard to the need to ensure that sufficient services are available for meeting the needs for care and support of adults in its area and the needs for support of carers in its area.'*⁴**

8(B). Although confident that a layman's reading of the Care Act had led the Forum and Labour group to come to sound conclusions, further opinion was sought from two leading legal experts. Professor Luke Clements is author of a standard text *Community Care and the Law*. Tim Spencer-Lane is a lawyer and Senior Lecturer and who led the Law Commission's review of social care law that led to the Care Act. ([Source Two \(B\)](#))

4 [Care Act, Section 5\(3\)](#)



Labour's alternative proposal

9. At the February 2020 Adults and Safeguarding Committee, the Labour leader made a statement ([Source Three](#)). He said he was not satisfied the Care Act requirement to identify all needs for wellbeing requiring Council resources was being delivered. He set out why the policy whereby needs that are a legal duty to meet forms a *ceiling*, and not the *minimum guarantee* as originally intended, was at the root of the problem. It meant the Council could never satisfy the Act's requirement to be aware of the full range of needs calling for care and support. He asked for a cross Party approach.

10. The Labour group then proposed a motion that the Council should adopt a 4 point plan. This would involve allowing social workers to work with service users to identify *all* needs calling for Council resources to promote their wellbeing; restricting the *legal duty* to meet only needs within a safety net, forming an authentic *minimum guarantee*, thus leaving the majority of needs to fall under the Act's power to meet need; being open and transparent about the needs that could not be met; and finally using that information to inform budget setting. The plan would fully satisfy the Care Act, pose no financial risk, and with the level of funding a transparent political responsibility.

The motion was defeated with voting along Party lines.

Critique of Barnet's policies and practices

11. Dis-satisfied with the responses of the administration, the Labour leader requested all the documentation and policies used in the assessment and support planning process. These were critiqued by Colin Slasberg, an Independent Researcher and Consultant, who had been supporting the Labour group and also BAPS. He reported to the Labour leader in May 2020 ([Source Four](#)). The summary conclusion was that Barnet's assessment and support planning process either breaches or fails to comply with the Care Act on 11 occasions and contradicts its own declared policy on 3 further occasions;
- While the Care Act refers to care and support plans comprising needs that are a *legal duty* and those the council has decided to use its the *power* to meet⁵, Barnet's plans consist only of needs that are a legal duty to meet
 - Resources determine whether Barnet considers they have a legal duty to meet a need. This is contrary to the Council's claim that needs are determined by *wellbeing*

The Statutory Guidance to the Act says the legal duty to meet need should be no more than a '*minimum threshold*'⁶. In Barnet, however, it is the total offer. Without a budget certain to be of the size required to meet all needs within the declared criteria, delivery of the imperative to spend within budget means the council must rely on the front line to calibrate eligibility of need to the budget.

5 Sections [24](#) and [26](#), Care Act

6 [Statutory Guidance, section 6.100](#)



12. The critique showed how Barnet sets about this task whilst giving the appearance of the opposite being the case. The assessment format falls into two distinct sections. The first gathers information; the second organises the information into needs the Council will accept responsibility to meet. The second section is titled 'Eligibility', thus making clear the blanket policy of meeting only 'eligible' needs. The first section includes a record of the person's wishes and preferences. This satisfies the statutory requirement to establish '*the individual's views, wishes, feelings and beliefs*'.⁷

However, it fails to satisfy the higher requirement to treat the person as being; '*best placed to judge their own wellbeing*'.⁸

Under the Care Act, resources are allocated to *needs*, not *wants*. What a person *wants* is qualitatively different from their *needs*. The former requires no justification; the latter does require justification. This can be delivered through an understanding of the constituent elements of *need* – the *issues* confronting the person, the *impact on their wellbeing*, how things need to be different (*outcomes*) and the *resources required* to achieve the outcomes.

If a person is to be treated as the best judge of their wellbeing, the Council must work with the person's *view of their needs*, not just their wishes. The Barnet process does not do so. The power balance between the Council and the person can be seen to break down into three stages;

- i. The Council establishes what the person *wants*
- ii. The Council determines what the person *needs* and the *resource required* to meet their needs, having as much regard to what the person *wants* as they choose
- iii. The person decides whether or not to accept the Council's decisions on a 'take it or leave it' basis. Formal complaint is the only other option.

The nine areas of wellbeing play no part in Barnet's assessment until the very end. Even then, they are only a tick box process as the last of the tests to determine 'eligibility'.

7 [Care Act, Section 1\(3\)\(b\)](#)

8 [Care Act, Section 1\(3\)\(a\)](#)

Challenges to the Director of Social Services

13. Based on the critique, the Labour leader posed a series of written questions to the Director ([Source Five](#)). The responses were marked by a series of evasive responses.
- The Director gave no answer to how spending is contained to budget on a day by day basis, making only reference to securing *cost effectiveness* when developing services at the strategic level.
 - Asked whether needs that impact on wellbeing which are not deemed eligible and which cannot be met by signposting, advice or information remain unmet, the Director failed to give an answer.
 - She failed to say if she recognized a distinction between *choice* and *consent*, referring to the Council's complaints process if people were not happy.
 - The Director failed to answer a question as to whether she recognized the distinction between the general duty to promote wellbeing under section one of the Act and the specific duty to assess all needs that have an impact on wellbeing under section 9. Instead she said that a 'stand-alone' assessment for wellbeing is not required by the Act, as if that is what the question implied.

She did, however, give a direct answer to a question about whether Barnet used the section 19(1) power to meet needs for continuing support. She was clear that Barnet did not. She added she had checked this point out with 'a wide range of councils' none of whom did.

The Forum's attempts to bring about change

14. Between September and November 2020 a subgroup of BAPS (which went on to form the Forum) met with Mr M, Director of Operations and Ms. B, Principal Social Worker. The aim was to arrive at advice for service users about the assessment process and how to engage with it.

- Four key principles were established as common ground;
 - i. Wellbeing should be at the centre of the process
 - ii. Service users should be empowered
 - iii. Service users should be seen as the best judges of their wellbeing
 - iv. Transparency of decision making
- Mr M and Ms B put forward draft advice to service users based on the way the Council operates ([Source Six](#)). We were clear that the approach they set out failed all four principles. We set out the reasons for Mr M and Ms B;
- Their advice was quite explicit that the assessment was structured around eligibility not the Care Act wellbeing areas.
- While their proposed advice referred to the service user as being the 'best judge of their wellbeing', it was only in relation to peripheral matters such as the way support is carried out. Service users are not considered the 'best judges' in relation to how their needs are defined and the support they require. The person's needs and support requirements remained a matter for the Council to determine, carried out subsequent to the social worker's discussions with the person and excluding the person.
- Their advice claimed that it is the social worker who makes the judgements about 'eligibility' and how needs will be met. They also claim that the social worker's decisions are based on what is important to the person in the context of the impact on their wellbeing. They claim the social worker's decisions are not based on finances. However, the social worker's 'decisions' are subject to:
'a management check and approval of the support plan delivered by a senior manager.'

The senior manager has a clear conflict of interest - the person's wellbeing on the one hand and protection of their budget on the other. Each eligibility decision carries a cost. Making the decision behind closed doors against criteria that are not set out fails the transparency principle.

15. During these discussions the 'approval' process was described to the Forum members as merely a light touch 'quality assurance' check. This becomes a credible description only if there is an expectation that social workers prepare assessments they believe the manager will approve. Recent 'approvals' of their own and team colleagues' cases will provide social workers with the information they require to do so. Presenting assessments that are ready for managerial approval, possibly pushing at the boundaries as far as they think they can, will satisfy the social worker's moral purpose of securing the best possible level of support for their service user. Such assessments, however, will not satisfy section 9 of the Care Act.
16. The Forum put forward an alternative document that it was confident would deliver on the four principles through proper delivery of the Care Act ([Source Seven](#)). However, as it would involve the Council having to change its practices, Mr M abruptly terminated the discussions.



Case examples

17. During the course of the discussions with Mr M and Ms B, some anonymised cases from amongst the small pool of people Forum members knew were shared ([Source Eight](#)). It was hoped to use these cases to explore the personal experiences of the decision making processes with Mr M and Ms B. Instead they responded by offering to intervene if anyone was unhappy with their service. This reflected a trend familiar to social workers whereby *'those who shout loudest get'*. Allowing exceptions serves to protect the status quo. The eligibility process relies on the use of high levels of bureaucratic power but has little principle. This makes it very vulnerable to informed and determined challenge. Councils are able to absorb the higher costs from successful challenges so long as such cases remain relatively small in number. The 'cost' is shared between the rest of the service user population who get proportionately less than they otherwise might.



Follow up action by the Labour leader

18. In October 2020 - progress having been delayed by the pandemic - the Labour leader met with the Director to address her responses to the questions arising from the critique. She was sufficiently concerned by the challenges to have secured legal advice from Counsel. She first secured a commitment from the Labour leader to keep the information confidential. Whilst the Labour leader understood that the advice gave the Director confidence the Council's approach satisfied the Care Act, it did not change his own view. In January 2021, he wrote in an article ([Source Nine](#));

'...none of these transformative provisions (of the Care Act) are being enacted by Barnet Council. Barnet like all Councils, maintain they deliver the national template. All the Care Act has done is provide new language for the same old practices that demean service users by telling them what their needs are, and then defining 'need' to suit their budgets'



Further budgetary practices

19. In the four years 2019/20, 20/21, 21/22 and 22/23 there have been no fewer than 12 separate occasions of cuts being made under the pretext of the type of 'win-win' that the 2019 **£424K** cut was falsely made. The total value of the cuts is some **£3.5M** ([Source Ten](#)).

- It includes a number of savings applying 'strengths based' practice. The approach is based on the view that the system makes poor use of the available resource money by creating dependency. Notwithstanding that such practice contradicts social work values, training and ethics, social workers are held responsible for the poor practice. The remedy is a training package in 'strength based practice' to teach social workers how to build on the person's strengths and so reduce dependency and, with that, demand on public resources. Barnet carried out its training programme for social workers in 2016. With social workers equipped with their new skill set, it is a reasonable expectation that the change in demand patterns would have happened immediately for all new service users and within the first of the annual reviews for existing service users. There is therefore no basis to expect savings from the practice several years after the training.
- The strategy fails to acknowledge that the practices that create dependency are not a matter of professional choice, but are a consequence of the policy environment within which practice takes place. A policy environment that allocates resources to risk and crises will, de facto, require practices that focus on risk and crisis. Recent research into the evidence for strengths based strategies, noting that, while they have been popular with policy makers for a number of years, concluded;

'at the present time it is hard to capture with any confidence what their (strengths based practices) role and particular contribution to improved outcomes is ⁹'

- Another justification for cuts has been increased independence through 'progression.' However, no evidence is supplied of the numbers of people who have progressed previously, or are projected to progress in the coming year, and the sums of money saved.

9 [Strengths-Based Approaches in Social Work and Social Care: Reviewing the Evidence, 2021. James Caiels, Alisoun Milne and Julie Beadle-Brown](#)

20. The Forum made representations to the Council about one of the most recent, a £500K cut to the learning disability budget ([Source Eleven](#)). This resulted in a response from the Director defending the cut and defending the Council's practices ([Source Twelve](#)). The opportunity was taken to set out fully why the Forum believed the Council's processes was not meeting the Care Act requirements and was failing Barnet's residents. An offer to meet with the Director to more fully explore the evidence and reasoning received no response.

21. Barnet's corporate plan for 2022/23 says;

'Barnet is a borough with much to be proud of. Our excellent schools, vibrant town centres, green spaces and diverse communities all help make it a great place to live, work and visit'

Noticeably absent from this high level vision is any suggestion of the Council being proud to enable people who need care and support services to be able to make life choices as do others and be valued members of the community, as the Care Act and any commitment to a vision for how life should be would require. Despite being the single largest spending part of the Council, social care is seen merely as a legal duty the Council is obliged to deliver. This reflects the minimalist-legalistic stance the Council takes to its responsibilities to people in need of care and support services.



Developments in 2022

22. In May 2022 Labour won the local elections and took control of the Council. Its Manifesto ([Source Thirteen](#)) included pledges to 'focus on independent living' with 'a new model of social care that puts the service user at its heart.' Delivery would be through 'a new strategy on engagement with adult social care users' and a 'service users Charter.' These developments would place the Council in a strong position to deliver the further pledge to be;

'a strong voice for social care, lobbying for national change to fix the social care crisis and ensure that wellbeing and independent living is at the heart of any new settlement for adults' social care.'

The Forum had every reason to believe these commitments derived from the learning of the Labour group since 2019. It was based on a clear view that the prevailing model of social care does not put the service user at the centre and is not focussed on independent living as understood by the Labour leader in his 2021 article. In a letter to the Forum in February 2022, the Leader confirmed he remained of the same mind.



23. The first Adults Committee of the new Labour administration duly mandated an officer Steering Group to create the Engagement Strategy and Charter. However, the Group made the extraordinary decision to exclude the assessment and support planning process. This was on the premise that the prevailing model already secured the highest level of engagement – co-production – by virtue of its practices being ‘strengths based’, and already satisfied the Care Act. However, although the Director referred in a late meeting of the Steering Group to external legal advice as evidence that the Council was compliant with the Care Act, she refused to make this advice available to the Group.

The Forum was invited to be part of the Group only toward the end of the Group’s life. The Forum’s representative was able to set out the case why the Group’s direction of travel would fail to deliver the Administration’s Manifesto commitments. She sought to table an alternative Engagement Strategy and Charter ([Source Fourteen](#)). However, it was decreed that the Group would not be allowed to discuss either.

The resulting Engagement Strategy and Charter was agreed by the Adults and Safeguarding Committee ([Source Fifteen](#)). It comprehensively failed to deliver the Manifesto pledges. It only addressed residents’ engagement with the Council within its strategic processes. It amounted to a series of practice intentions that most would think should be standard practice. Describing it as a charter is a misnomer.

24. In January 2023 the Forum wrote to both the Leader and Chief Executive with a plea to allow us to formally present the dossier and to find a way forward that addressed the evidence and analysis ([Source Sixteen](#)). Neither responded.

CONCLUSIONS

The Council claims:

- it does not take resources into account when deciding eligibility of need
- eligibility is determined by the national criteria, meaning all needs that have a significant impact on wellbeing, judged by importance to the person, are met
- it is able to do so because budgets are set to meet all such needs
- people are empowered through the exercise of choice in the supports offered to them

These claims enable the Council to claim it is compliant with the Care Act. The 'wellbeing principle', that puts wellbeing at the heart of the process, is being consistently delivered.

But not one of these claims is true.

The budget for social care is not set as set out above. Each year Barnet sets its budget on the basis that the previous year's budget was sufficient to meet all needs deemed 'eligible'. Adjustments are then made, both up and down according to circumstances. But if 'eligibility' is calibrated to the budget, the budget is, by definition, always sufficient to meet 'eligible' needs. It's a self-repeating, circular process. Barnet will have zero information about how far its budget has moved away from being able to meet all needs for wellbeing in the community.



Incrementalism in budget setting is a sound approach if at some point in the recent past, a budget was set known to be sufficient to meet all needs. Barnet has at no stage carried out such an exercise since the national criteria were introduced in 2015.

Barnet's claim that making 'cost effective' decisions to meet 'eligible' needs can ensure spend is matched to budget is nonsense. Cost effectiveness ensures the least costly way of meeting need. Making cost effective decisions is inarguably the right approach. However, cost effectiveness cannot deliver spend to any pre-determined level, either at the individual or aggregate level. Barnet has been seen to misappropriate the term 'cost effective' to conceal decisions that are plainly *cost cutting*.

The actual process to determine eligibility

The Council must deliver two imperatives;

1. Once the Council deems a need to be 'eligible', it must be met as a legal obligation
2. Spending must come within budget

The first is malleable, the second is not. If the budget is not set to meet all needs against any given eligibility criteria, then eligibility must be set to the budget. Each manager has their own eligibility threshold.

Social workers and resource allocators describe their decisions using the language of the National Eligibility Criteria. This creates the impression that the declared process has been applied, including to the social workers and resource allocators themselves.



The Council is aware that determining eligibility by resource is unlawful. It has cover it up. The Council says its the social worker who makes the decision. Without budgetary responsibility, social workers can focus solely on the person without being compromised by concern about resources.

However, the social worker's decisions have to be 'approved' by a senior manager. The senior manager will have the information to know the level of demand the budget can sustain. They will also have managerial authority over the social worker.

The managerial approval is described as merely a 'quality assurance' check. This makes sense if the social worker's 'decisions' are their anticipation of what the manager will agree.

The *actual* eligibility decision making process takes place between the social worker and manager. The person is not present. Their 'choice' is only in how they respond to the outcome.

The *actual* and *official* eligibility processes are as different as chalk and cheese.

The *actual* eligibility process enables the Council to make cuts to the budget under cover of reducing demand, without any evidence that there will be a reduction in demand, in the confident knowledge that the actual eligibility process will deliver the cuts.

Moral purpose

The system is delivered by the professional workforce. They must have moral purpose to sustain their commitment. They can do so in the following ways;

- Social workers' can find moral purpose in securing the best possible level of support for their service users. Pressing the local 'eligibility' buttons, sometimes pushing the decision making manager to the limits of what they will agree, enables them to achieve this.
- Decision making managers have the moral purpose of distributing their available resources as fairly and consistently as possible

The legislation

WHAT THE CARE ACT REQUIRES	WHAT BARNET COUNCIL DOES
<p>All needs calling for care and support that have an impact to any degree on any of the nine areas of wellbeing must be identified.</p>	<p>Only needs for which resource exists are identified.</p>
<p>Support plans to consist of needs deemed a legal duty to meet and any the Council has a power to meet and has decided to do so.</p>	<p>Support plans consist only of needs a legal duty to meet. The power to meet need is never used as a blanket policy.</p>
<p>The Council must have regard to the need to ensure that sufficient services are available for meeting the needs for care and support of adults in its area and the needs for support of carers in its area.</p>	<p>The Council sets the level of service disregarding what is sufficient as required. It has no such information.</p>

A blanket policy to exclude the option of using the section 19(1) **power to meet needs** would appear to amount to fettering of a discretion given the Council by primary legislation. If so, this would be in breach of Public Administration Law.

The Council may say it exists because it only has enough money to meet needs deemed a legal duty to meet.

The reality is it only has enough money to meet needs that are a legal duty because it adjusts what it deems to be a legal duty to the money it makes available. The prophecy is self-fulfilling and will always be true.