



# A GUIDE TO THE CARE ACT

## And Getting the Support You Need

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REAL CARE



TOOLKIT

This guide will be helpful if you believe you have grounds to complain about your assessment and the support plan you have been offered.

The more you are able to quote from the Care Act the stronger your case will be.

It is written by a lay person for lay people.

Colin Slasberg is a social care, not legal, professional. However, he has written extensively in academic journals in articles that feature the Care Act.

**Colin refers to Barnet throughout this document, but the content can be applied to any council across the country.**

# ASSESSING ALL YOUR NEEDS TO PROMOTE YOUR WELLBEING

The Act is very clear that councils should identify *all* needs that have *any* degree of impact on your wellbeing. This is set out in section 9 of the Act which says;

***'A needs assessment must include an assessment of the impact of the adult's needs for care and support on the matters specified in section 1(2)'***

Section 1(2) is the list of wellbeing domains set out in the self assessment and in the Advice to Service Users.

When councils assess only for 'eligible' needs as do Barnet, they are contravening this part of the Act. A number of recent High Court and Ombudsman judgements have confirmed this.



# WHAT ARE 'ELIGIBLE' NEEDS?

Councils, including Barnet, behave as if 'eligible' needs are the only needs the Act requires them to meet. This is not true. Section 13 of the Act says;

***'Where a local authority is satisfied that an adult has needs for care and support, or that a carer has needs for support, it must determine whether any of the needs meet the eligibility criteria'***

Section 18 goes on to say that the Council ***'must meet the adult's needs for care and support which meet the eligibility criteria'***. Councils must meet these needs whatever the cost.

However, section 19 goes on to say the Council

***'may meet an adult's needs for care and support if the authority is satisfied that it is not required to meet the adult's needs under section 18'***

'Eligibility criteria' only apply to needs the Council is obliged to meet by law under section 18. Needs that can be met under section 19 are not subject to eligibility criteria. Failing to meet a section 19 need is not unlawful. This makes it possible for the Council to be honest if you have any needs it does not have the resources to meet.

Barnet, in common with other councils, never uses section 19 for on-going needs for care and support.





# DOES THE CARE ACT SET THE ELIGIBILITY CRITERIA?

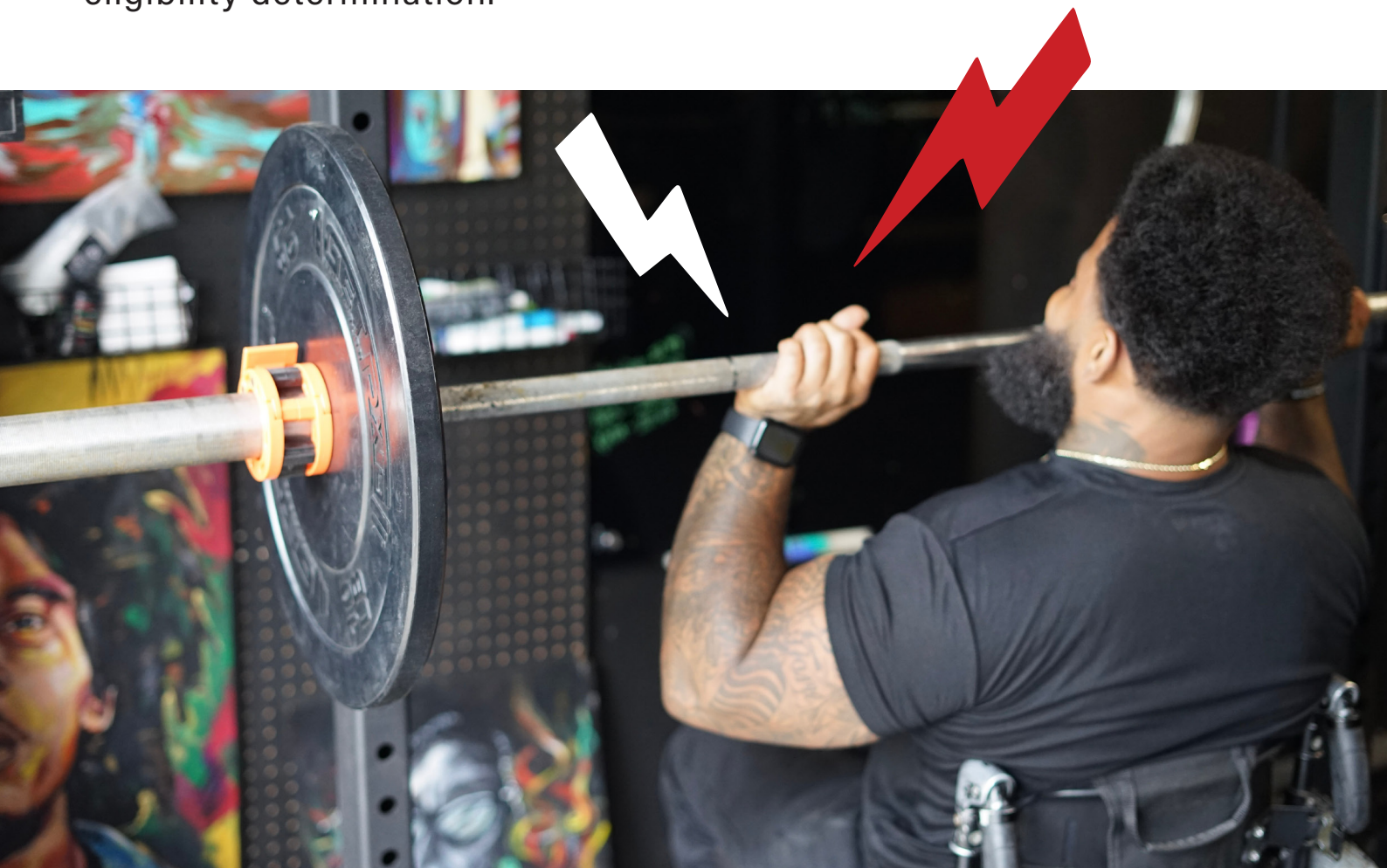
No. Section 13(7) of the Care Act says it will be for Regulations to the Care Act, which the Government draws up, to say what the criteria actually are.

# CAN RESOURCES INFLUENCE ELIGIBILITY CRITERIA?

Section 13(8) of the Care Act goes on to say the following about eligibility criteria;

*'The regulations may, in particular, describe needs by reference to*  
*(a) the effect that the needs have on the adult concerned*  
*(b) the adult's circumstances'*

This specifically excludes considerations of resources. In other words, the eligibility determination must be made without regard to resource availability. Councils cannot admit that resources are influencing the eligibility determination.



# WHAT ARE THE ELIGIBILITY CRITERIA UNDER THE REGULATIONS?



There are three parts to it. The first is that the person must have some kind of mental or physical impairment – which is self evident - and the second that the person’s needs must meet at least two of the ‘eligibility outcomes’ listed in the Advice to Service Users. This too is a weak test which Barnet ignores if only one outcome is affected but it’s a really important one.

The key judgement is in the third part which is whether the need will have ***‘a significant impact on wellbeing’***. This is very loose and combined

with the final decision about eligibility resting with senior managers responsible for the budget, creates a high risk that resources **do** influence the decision. The scale of the ‘post code lottery’ points to this being the case up and down the country.

## DOES THE CARE ACT OBLIGE COUNCILS TO PROVIDE RESOURCES TO MEET ALL NEEDS FOR WELLBEING?

The first sentence of the Care Act says;

***‘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.’***

Meeting only ‘eligible’ needs, which are a subset of all need that promote wellbeing, is clearly a failure of the Council’s general duty as set out above.



Section 5 goes on to require councils to

***'promote the efficient and effective operation of a market in services for meeting care and support needs'***

Section 5 goes on to say the council must

***'ensure it is aware of current and likely future demand for such services' and also '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'***

These provisions come into play when councils set their budgets. Councils that identify only 'eligible' needs cannot meet these requirements as they do not have the information about all needs to promote wellbeing. This is especially the case if 'eligibility', notwithstanding it being contrary to the Act, is in reality determined by resource levels. That creates a circular process ensuring a self-fulfilling prophecy.

The Act does not say councils must set budgets and create a market to meet all needs. That would cut across the democratic process that determines public spending priorities. However, it says councils must, when they make spending decisions, be fully aware of the true level of need.





# CARER'S NEEDS

Section 10 of the Care Act requires councils to offer a 'carer's assessment' to all carers who may be in need of care and support themselves.

The treatment of carer's needs in terms of needs 'eligible' to be met as a duty and needs the council can meet as a power are essentially the same as for cared for people.

There is a difference in that the Care Act sets out a broader range of needs than just for wellbeing. A carer's assessment must also include;

- '(a) whether the carer is able, and is likely to continue to be able, to provide care for the adult needing care,***
- (b) whether the carer is willing, and is likely to continue to be willing, to do so'***

And must also have regard to must have regard to;

- '(a) whether the carer works or wishes to do so, and***
- (b) whether the carer is participating in or wishes to participate in education, training or recreation'.***

Section 20 of the Act acknowledges that a carer's needs may be met by services to the care for person. It may, of course, be that **all** the carer's needs will be met by a well resourced support plan to the person they care for. These needs have to be built into the cared for person's assessment and support plan and must, of course, be subject to that person's agreement.





# FAMILY OR FRIEND CARERS ARE ADVOCATES FOR THE CARE FOR PERSON

Section 67 of the Act says an independent advocate must be made available if;

***'the individual would experience substantial difficulty in doing one or more of the following—***

***(a) understanding relevant information;***

***(b) retaining that information;***

***(c) using or weighing that information as part of the process of being involved;***

***(d) communicating the individual's views, wishes or feelings (whether by talking, using sign language or any other means)!'.***

However, they do not need to if there is someone who

***'would be an appropriate person to represent and support the individual for the purpose of facilitating the individual's involvement'***



Family or friendship carers are often best placed for this role. They have the most intimate knowledge of the person they care for. However, it will be important that if you are a carer who wishes to play this role that you make it clear to the Council. Otherwise, they are likely to treat you as just someone who can express a view which the Council is not obliged to act on. As a formal advocate under the Care Act, you have all the rights under the Care Act as if you were the cared for person.



If they can, the cared for person must consent to you acting as their advocate. If they cannot, the local authority does have to decide if where the individual lacks capacity or is not competent so to consent, the authority has to

***'satisfied that being represented and supported by that person would be in the individual's best interests'***

If the Council does decide it would not be in the best interests of the person you care for to be their advocate, although the Care Act does not require it, its reasonable to expect the Council to put in writing why they have come to that view.

