The government's 'emergency powers' Bill, as it affects the Care Act

Here's the thrust of the main provisions, with a layperson's translation and some expert legal analysis underneath.

The provisions of the emergency Coronavirus Bill suspend the currently mandatory enforceable duty to meet a person's needs, in the Care Act, downgrading it to a **power only,** other than in the one situation where meeting the needs is necessary to avoid **a breach of human rights**.

All Assessment, Eligibility, and Review duties for service users and carers are also suspended, and also downgraded into powers only.

Carers already weighted down with the stress will have no practicable way of saying No, to requests for even more help than has already been squeezed from them.

Protection from financial liability for breach of statutory duty, both from BEFORE the Bill becomes law, for an unlimited period, and also going forwards, given the chaos that will be unfolding, even when the worst is over, is provided for.

This Bill means that care providers will have no leverage at all in relation to protecting legitimate business interests by setting a fee that compensates them for the risk they take, even after a period of intense contribution in the national interest.

So here's a document with a clause by clause analysis for use in lobbying one's MP.

This is not **saving social care** and it is not doing **#whateverittakes**!

Assessment of needs

A local authority **does not have to comply with any duties** imposed by the following provisions—

(a) section 9 of CA 2014 (**assessment of an adult's needs for care and support**);

(b) section 10 of that Act (**assessment of a carer's needs for support**);

(c) any regulations made under section 12(1) or (2) of that Act (**further provision about assessments under section 9 or 10**);

(d) section 12(3) and (4) of that Act (**duties to give written records of assessments**);

CASCAIDr's interpretation

This suspends the duties to **assess (identify a person's needs)** on the basis of an ***appearance*** of needs for care or support of any kind, for any new candidates for a care package, or their carers, not merely on an appearance of *eligible* needs.

So, councils will have to decide what is going to determine the allocation of social work and other expertise to even *considering* people's needs.

The obligation to provide a written record of an assessment that is the professional's judgment about the state the person is in, is also being suspended, so that there will be no accountability for the assessment process.

This is effectively changing Three Conversations into ONE conversation: how close to desperate are you, please?

The factors mentioned in the suspended s9 are all parts of the current Care Act that make assessment worth *having*:

s9(4) A needs assessment must include an assessment of—

(a) **the impact** of the adult's needs for care and support on the matters specified in section 1(2),

(b) **the outcomes that the adult wishes to achieve in day-to-day life**, and

(c) whether, and if so to what extent, the provision of care and support could contribute to the achievement of those outcomes.

CASCAIDr's interpretation

So, the person-centredness and focus by the professional on the mind-set and values of the *individual*, that is built into the Act, goes out of the window.

Involvement of the needy person and others in assessment

The current Care Act says this:

s9(5) A local authority, in carrying out a needs assessment, must involve—

(a) the adult,

(b) any carer that the adult has, and

(c) any person whom the adult asks the authority to involve or, where the adult lacks capacity to ask the authority to do that, any person who appears to the authority to be interested in the adult's welfare.

CASCAIDr's interpretation

So, a local authority will have to decide whether to bother with involving the family, whilst no doubt relying on them more and more; and whether or not to allow any other third party such

as a preferred advocate to be involved, or a current provider interested in the person's welfare.

Eligibility decision-making

Next, in the Bill, it says that a local authority does not have to comply with any duties imposed by section 13 of CA 2014 (determination of **whether needs meet the eligibility criteria**) or any regulations made under that section.

CASCAIDr's interpretation

The backstop provision for **meeting** needs having been made into the avoidance of a breach of human rights, has the effect of sending that national minimum threshold of how bad a state a person has to be in, before they are eligible to have their needs met, down to hitherto **unimaginably** low levels. Levels, which if allowed to sink any lower, would be such as to require any government to have to acknowledge that it had simply given **up** on social services for adults altogether, and was abandoning ship to families and the private sector, and people's own wealth.

Nothing in this paragraph **prevents a local authority from carrying out** any assessment, or making any determination, **it considers appropriate for the purposes of exercising its functions under section 18, 19, 20 or 62 of CA 2014** (as modified by paragraphs 4 to 6 and 9 of this Schedule).

Well, that's the good news! How cheering ***that*** will be to the well-informed, eh!?

CASCAIDr would stress that the use of public law principles regarding relevance, rationality, the need for reasons and an evidence basis and a fair chance to assert one's needs, coupled with human rights principles do still mean that there is something to stand up for, during this period of suspension, if one is legally literate.

So, it's not SO very bad, as yet.

But the Guidance under which councils are to be obliged to operate, as to HOW front-line staff or their managers are supposed to make that human rights avoidance *judgement* call, is not being offered up as yet.

Lawyers who know about human rights principles in the context of social care and mental health services need to be involved in that, we would suggest.

The forthcoming 'Guidance'

The Secretary of State ***may issue guidance*** about how local authorities are to exercise functions under any of the following enactments in consequence of the provision made by this Part of this Schedule—

(a) Part 1 of CA 2014;

(b) section 2 of the Chronically Sick and Disabled Persons Act 1970;

(c) section 17 of the Children Act 1989.

A local authority must *comply* with such guidance issued under this paragraph as the Secretary of State directs.

A local authority may disregard any guidance under section 7 of the Local Authority Social Services Act 1970 or section 78 of CA 2014, so far as it is inconsistent with guidance issued under this paragraph.

CASCAIDr's interpretation

The current Care and Support Guidance goes out of the window then, unless it suits a council to abide by it - and the new Guidance is mandatory.

To a public law mind, that means that the Guidance isn't going to BE Guidance, in fact, in legal terms.

It's going to be **Directions.** That means that instead of being able to be treated as important (and mandatory where it says MUST or SHALL or MUST NOT) ***unless there's a very good reason to the contrary*** (that being the status of statutorily underpinned Guidance at the moment) it will become the **law**, by **ministerial diktat**.

CASCAIDr expects that we all 'get' that this may be essential in an emergency. But if this promised guidance is law by default, in the context of a woolly discretion just to prioritise by whatever yardstick the government decides is appropriate, and with a backstop only of human rights principles that haven't even been properly explored BECAUSE the domestic law of the Care Act has made that effort pretty much unnecessary, to date, then we are all up a gumtree. Particularly old, frail, disabled, mentally ill and sick people.

Charging and Financial Assessment

A local authority does not have to comply with any duties imposed by section 17 of CA 2014 (assessment of financial resources). This is subject to sub-paragraph (2).

Sub-paragraph (2) says that a local authority may not make a charge under section 14 of CA 2014 for meeting any needs under section 18, 19, 20 or 62 of that Act during a period for which paragraph 4, 5, 6 or (as the case may be) 9 of this Schedule has effect **without having carried out an assessment under section 17 of that Act i.e. a *financial* assessment.**

The requirement under sub-paragraph (2) to carry out an assessment under section 17 of CA 2014 applies **whether or not the authority has made a determination** under section 13(1) of that Act.

The local authority is not prevented by that decision from subsequently carrying out an assessment under section 17 of CA 2014 (whether during or after the emergency period) and deciding to **make** a charge for meeting those needs during that period; and nothing in that section is to be taken to prevent the authority from carrying out such an assessment, even though the authority has already begun to meet, or has met, those needs.

CASCAIDr's interpretation

This means two things: one, financial assessment is a pre-condition to a charge being made during the emergency, but neither the means test nor agreeing to or paying the charge will be a pre-condition to anyone's getting a service.

Financial assessment can be put OFF until the worst is over, but then operates retrospectively to validate a charge for whatever one *got*. Doing that financial assessment is the key to charging for anything that anyone did receive and regardless of whether or not they were found **eligible** against the human rights test for the triggering of the one remaining duty, or against a less stringent test of maybe getting the services under the general power, as now, or even (rarely) getting the services by way of **prevention** before any assessment would have ever been done anyway.

Local Authority absolute and enforceable duties to meet needs

(1) A local authority must meet an adult's needs for care and support if—

…

(b) the authority **considers that it is necessary to meet those needs for the purpose of avoiding a breach of the adult's Convention rights**, and

(c) there is no charge under section 14 for meeting the needs or, in so far as there is, condition 1, 2 or 3 is met.

CASCAIDr's interpretation

These conditions 1, 2 and 3, from the original legislation, relate to the duty to meet needs arising for a person having so little money that they would be chargeable to some extent under the means test (1), or so much that they are full cost payers but still want the council to arrange for their services at home (2), or (most importantly) if the adult lacks capacity to arrange for the provision of care and support, and there is *no person authorised to do so under the Mental Capacity Act 2005 or otherwise in a position to do so on the adult's behalf.*

That particular Care Act provision has never been clear, although its intention was laudable: it meant that no matter how rich one was, there was still a duty to make arrangements for that person if they had nobody to do it in place of the council (i.e. to make the contract, with capacity).

But the ambiguities were many: did it mean there was no duty simply because one had a finance deputy or attorney? Or was the duty only avoided if one had a statutory agent for **welfare?** Did the second part of the formulation for negating a duty apply when the needy person had someone 'around' who was willing to sort out the arrangements for the individual even though they had no legal authority to act on their '*BEHALF'* – such as a relative who has *practical* means of accessing someone else's bank account even though the person long since lost capacity to agree to them so doing? And did this include a relative who was

prepared to spend their own money, for the person's benefit, even though in their own NAME, and not as the other's *agent*?

This ambiguous provision still **applies** under the Coronavirus Bill, but so do the ambiguities. In future, one must wonder whether this other person will have to be **willing**, or whether this formulation now become the means to a ***council's*** being able to say: "Hmmm. You look wealthy to US, so *you* must sort your mother out. Bye…!". Who knows?

The power to meet needs

Section 19 of CA 2014 (the power to meet needs for care and support) has effect as if there were omitted—

(a) the reference in subsection (1) to having carried out a needs assessment and a financial assessment;

(b) the reference in subsection (2) to having made a determination under section 13(1) of that Act, and the words "which meet the eligibility criteria";

(c) the reference in subsection (3) to having not yet carried out a needs assessment or made a determination under section 13(1) of that Act.

CASCAIDr's interpretation

This section was the backstop for all those found to be ineligible, or as having eligible needs but without being owed a duty for whatever reason, regarding the **meeting** of their assessed needs: it meant that one could still resort to the POWER to meet needs, refer the council to the need to think about that, and expect a lawful consideration of that discretion, even though it would clearly be unlikely that one would succeed, if a council was already on its knees, financially and in terms of staffing.

What matters about this now is that it will be the ONLY basis on which to meet needs in non Human Rights cases. **So, all advocates, family members, council workers, panel members and lawyers must grasp that they need to hold councils to account in relation to the decision whether or not to *exercise* that power, and if not, *why* not, please? Public law is not suspended under the Coronavirus Bill. Not quite.**

But the s19 power is stripped bare of any relevant context – judicial review would only flow in future against councils who were stupid enough to say publicly 'Oh, we never *exercise* that power – or we only do so for people who have tested positive'. *Or* negative, conversely! The point is that the power must not be rendered useless by a fettering of that discretion.

The Human Rights aspect

For section 18 of the Act, there is substituted the following:

"(1) A local authority must meet an adult's needs for care and support if—

…

(b) the authority considers that it is necessary to meet those needs for the purpose of avoiding a breach of the adult's Convention rights

CASCAIDr's interpretation

This is the provision that negates the effect of the Eligibility Criteria in the Regulations and substitutes the test of whether it is necessary to meet the needs to avoid a human rights breach.

We fear that the only staff who know how to do a human rights assessment in adult social care are those who manage the case load made up of people with nil recourse to public funds – people with an immigration status, and there won't be many of those around, for much longer!

Most social work colleges will not have taught the newly qualified social work students how to do this, we have to say, in our experience.

This is a recipe for turning social care into a dogfight for resources, determined by the principle 'S/he who shouts loudest gets the services'.

It is not what the public deserves, having been told that the government will do **Whatever It Takes**.

Negation of even that limited duty

The Bill goes on to say this:

But the duty [limited though it will now be] under section 18 or 20(1) of CA 2014 does not apply to a local authority if—

(a) the authority notifies the relevant person that it may make a charge for meeting needs under that section, and

(b) the relevant person asks the authority not to meet those needs.

CASCAIDr's interpretation

This is saying that there will be no duty, even in human rights cases where the council tells the person that there will be a charge, and the person says 'Ooh no, I can't handle that, so thanks for the conversation, but no thanks to a service, actually.'

We have no problem with that choice if the person is capacitated and is making a free choice and does not care to pay.

But the idea that anyone in the emergency period has the freedom to make that choice, is laughable.

Nobody is suggesting that the council sector will cynically *profiteer*, because that is still not allowed, but the prospect emerges that people will be passed by for care during the crisis

because they are terrified of saying yes to it, given that they won't know what the charge will BE, or how long it might apply for when levied retrospectively.

In cases where the person themselves lacks capacity, the Bill provides as follows:

…where (ii) the adult lacks capacity to arrange for the provision of care and support, [the] person who is authorised under the Mental Capacity Act 2005 to arrange for such provision **or is otherwise in a position to do so on the adult's behalf.**

So that is making needy people's decision-makers – their formal agents for welfare or just finance, and their informal supporters (family members with some other means of accessing the person's or their OWN funds for spending on care) focus on the financial consequences of accepting care.

It has to be said that many in that position will be severely conflicted, most likely candidates for this unenviable role being the sons and daughters of elderly people, now *themselves* in financial crises, because of the impact of the virus on employment, labour and income.

There is no word in the Bill as to what Safeguarding teams are supposed to do about that sort of concern. Or whether safeguarding has any real role, in the new era. The section 42 duties are not suspended, but how does one tell the difference between abuse and neglect on the one hand, and the physical impossibility of doing any more than pray together, or repeat the mantra of Whatever it Takes, on the other?

Choice rights regarding accommodation out of area, and in preferred care homes

A local authority does not have to comply with any duties imposed by the following provisions— (a) any regulations made under section 30 of CA 2014 (cases where adult expresses preference for particular accommodation);

CASCAIDr's interpretation

This means that all the provisions for people being able to move to a part of the country to go into a care home close to relatives, or simply to somewhere where they'd like to live, or live out their days, are suspended, even if their relatives could pay a top up over and above the going rate. It means that the right even to be placed by a council **in a home of your own choosing, or one where your relatives think it really is best for you to go, with a top up, go out the window.**

That means that it will be impossible to challenge the arbitrarily low rates that councils have been wont to announce as their usual rates for personal budgets for particular types of client profile, too, during the emergency period of up to two years, which will mean that care home ***providers*** have absolutely no means to withstand a race to the bottom, once the acute rush to use beds for recovering patients is over.

Care Planning process and paperwork

A local authority does not have to comply with any duties imposed by the following provisions of CA 2014—

(a) section 24 (duty to prepare care and support plan or support plan, etc);

(b) section 25 (duties relating to plans);

(c) section 27(1), (4), (4A) and (5) (duty to review plans, etc).

CASCAIDr's interpretation

This is the provision in the Bill that takes the scaffolding for rights and accountability right out of the Care Act.

Section 24 is the duty to create a care plan consistently with help to get it right, due process and co-production principles built in, although the care plan is and always has been the council's responsibility and agreement has not been required, and there has been no appeal ever made available: negotiation, at least, was part of the fabric of the Act.

Section 25 is the law on the **content** of a care plan, which made it clear, together with case law that has been exploring what the section really means**, that a care plan had to be transparent, rational, coherent and explicit**.

Explicit, that is, as to which of the eligible assessed needs would be met by the council's funding or commissioning or a direct payment and which would be met by supposedly willing and able relatives, and what the charge or contribution from the individual's own means, would be.

Section 25 is the section that required that in performing the duty under subsection (3)(a) or (4)(a), the local authority **must take all reasonable steps to reach agreement with the adult or carer for whom the plan is being prepared about how the authority should meet the needs in question.**

So, that's the heart and soul of the Care Act, simply suspended.

Section **26** is not suspended: that is the definition of a personal budget, as the cost to the council of meeting the needs that have made it through to the care plan.

We are guessing that the thinking behind this is that this section doesn't **need** to be suspended if the remaining **duty** to meet needs WITH this personal budget, is now going to be limited by the notion of what's necessary to avoid a breach of human rights, and thus robbed of virtually all real meaning or value – and given that the **power** to meet needs is to be as short or as long as piece of *string*.

Section 27 is the part of the Care Act that requires general periodic and specific reviews on any reasonable request to be done by councils. One can assume therefore that one can just whistle for one of those, UNLESS one can point to a breach of human rights, current or impending, which for those who are really that desperate, is a tall ask, with or without access to lawyers who know what they're doing, to our minds.

More importantly, though, **s27 goes on to require proper *process***, and involvement of interested parties, **before any change is made to a care plan**.

It has been the law since 1995 that once a person's care plan has been finalised, it cannot be changed, unless or until there has been a lawful re-assessment, and this has been the bedrock of most judicial review in community care cases, in this country. It has never been the law that there could be no change unless the person's needs had lessened: it was possible for councils to decide afresh, after due process, to meet needs less generously. But

the concept of avoiding significant impact to wellbeing was the benchmark below which they could not afford to go, without risk of legal challenge.

So, this provision was the only protection that existing clients have that their needs will continue to be met. And it is being suspended for 2 years, potentially.

Continuity of care plan and budget reliability for people who move

A local authority does not have to comply with any duties imposed by the following provisions of CA 2014— (a) section 37 (duties of notification, assessment, etc when a person moves); (b) section 38 (case where assessments not complete on day of move).

CASCAIDr's interpretation

This provision removes all the rights of a person to plan to move from one area of the country, of their own volition, with their care package funding intact, if the destination authority hasn't got its act together and assessed their needs in advance.

So this is simply a new form of lockdown, specially crafted for people with illnesses or disabilities…

Duties arising before commencement – para 16 of Schedule 11

A provision of this Part of this Schedule that provides that a local authority does not have to comply with a relevant duty, or modifies a relevant duty of a local authority, **applies in relation to duties arising *before the commencement day* as it applies in relation to duties arising on or after that day.**

…"the commencement day", in relation to a provision of this Part of this Schedule, means—

(a) the day on which that provision comes into force, or

(b) where on any day the operation of the provision is revived by regulations under section 74(3), **that day;**

CASCAIDr's interpretation

This section means that any enforceable duty as to process or to actual service provision that could have given rise to a finding of breach of statutory duty, now will do so no longer, and even BEFORE the commencement date of any emergency suspension or modification.

There is no limitation of retrospectivity to any given date such as the arrival of the virus in this country, or the beginning of self isolation or shielding advice to the public. In theory, although this would be a matter for the Courts, that period of absolution could be regarded as preceding even the passing of the legislation, depending on what the Courts thought of the context of this clause being firmly rooted in the crisis, or more widely.

Once this clause is passed into law, if not amended, it will likely have a baleful effect on a legal development that has been quietly building up a head of steam for the last 6 months.

In October 2019, the Court of Appeal gave judgment in a case one element of which gave people a very good reason for **bringing financial claims** against councils for systematically acting in breach of the Care Act.

That case was *CP v NE Lincs* in which the Court of Appeal said that **unlawful action or omission regarding assessment or care planning under the Care Act gave rise to restitution** – reimbursement of moneys paid out by others, in lieu of a council doing its own duty, or in the sum of the reasonable **value of the care and support** that ordinary people or services had **been forced into providing**, simply by dint of non-performance by the council of its assessment or provision duties.

This was big news (to those interested in social justice) because (contrary to all the rhetoric), there IS no 'duty **of** care' for social work thinking that is so bad as to be in breach of statutory duty. And there is no possibility of damages for negligence, even for harm caused as a result of inconceivably underfunded social work decision-making and care packages, in English law.

But this new remedy of restitution was ***different*** to either of those sources of remedy, and was being said to arise within the context of breaches of the Care Act as a 'normal public law principle'.

That clarification meant that all sorts of behaviours on the part of a compliant public could be envisaged to change, once compensation by way or restitution became better understood to be an enforceable remedy.

The LGSCO was aware of this development and had been abiding by its implications, in the course of finding fault with councils; LGSCO awards within the complaint system were being made, of between £1000 and £10000, for exactly that concept: restitution, for the unjust enrichment of councils who were ignoring the law – admittedly, we have to say, because the councils were *themselves* underfunded, systemically, by successive governments for 10 solid years. Jeremy Hunt himself admitted to Emily Maitlis that the cuts that he presided over since 2010 were 'the most silent and the most devastating'…

The impact of that legal development was assessed conservatively to be £150m nationwide, by CASCAIDr's CEO, before any **further** consequential impacts were totted up. Those further hits were seen to be

a) the hit to the legal aid fund,

b) the hit to the courts and LGSCO,

c) the hits within associated fields into which the remedy could also have jumped and operated - such as restitution of **rent paid for inappropriately required tenancies for s117 Mental Health Act clients**, inadequately funded care packages for **Continuing NHS Health Care cases**, and **repayment of costs associated with core special educational needs**, being met ultimately, out of parents' own pockets.

CASCAIDr had manged to obtain £76K for one family, by use of the **principle** alone – without being a law firm, without any lawyers jumping on the bandwagon, acting for free under our standard charitable model, and without any legal aid funding being needed.

Special Advisors to the Prime Minister knew of this impending risk, and so did the Department of Health.

Both had been informed of it by Care and Health Law, our CEO's personal legal framework consultancy, several weeks ago, in writing.

So - yes, the world has turned upside down, since then.

But it is unlikely, we think, that these emergency provisions could have been framed **without** thought having been given to the fortuitous convenience of being able to **prevent** that tsunami of restitutionary aggravation and exposure from washing over the sector and central government, under cover of coping with Coronavirus.

Any reader's current role and responsibilities within the adults' social services sector would naturally affect whether one thinks that that outcome is a stroke of genius, or shockingly cynical opportunism.

From a rights-based perspective and the point of view of wronged citizens, who - if they were ever going to claim restitution, at all, would have had to have lost time or money, that should have been their *council's* responsibility, it doesn't look good to us at CASCAIDr…

The future

After this is all over, the Bill makes this provision:

In determining for the purposes of any proceedings whether a local authority has complied with its duty to carry out a relevant assessment within a reasonable period, a court must take into account (among other things) the following factors—

(a) the length of any period for which any provision of paragraph 2 or 12 had effect, and

(b) the number of relevant assessments which need to be carried out by the local authority following the end of any such period.

CASCAIDr's interpretation

The emergency Bill's **downgrading of the Care Act duties into discretions**, and the unlikelihood of any court ever again feeling able to say (in a crystal clear way, as did Haddon Cave LJ, in the *CP* case) that **restitution *must follow* on from a breach of Care Act duties**, is hereby ensured to last for a whole lot longer than 2 years, because courts are specially obliged by this provision to look at the difficulty of a return to normal, before declaring a breach of statutory duty.

This is what LJ Haddon Cave had said:

> "**A breach of a statutory duty is a breach of statutory duty. It is, by definition, unlawful conduct. Unlawful conduct by a public body cannot merely be discounted or ignored.**
>
> **Moreover, s. 26 [of the Care Act] is no minor matter. A local authority's statutory duty under s. 26 of the Care Act 2014 to provide a personal budget to**

meet a person's care and support needs is fundamental to the operation of the care and support scheme which the Care Act 2014 underpins.

In the present case, having found the Council in breach of its statutory duties, [the judge in the High Court] should have gone on to hold that the Council had acted unlawfully and, accordingly, was liable in principle to compensate CP in respect of any monetary shortfall, in accordance with normal public law principles of legal accountability of public bodies."

CASCAIDr's Conclusions

We do **get** that the Care Act would have had to have 'given' a bit, in the context of the virus.

We did not actually envisage being behind the issue of proceedings against all 150 odd councils where there is no service due to coronavirus but where best endeavours are genuinely being made! Pre-virus, CASCAIDr had a strategy for assisting government and the sector to **manage** the restitution problem, ethically and calmly, which will now likely be of limited value to anyone.

But the irony is that any sane person who is remotely switched on to what is happening around them, right now, would likely have *understood* that these are difficult times - and likely would have had better things to do than seek redress for its own sake. **The British public is not unreasonable or money-grubbing, constitutionally, in our experience.**

So, now, all bets are off. To us, these measures look like opportunistic power-grabbing to suspend vital legislation that has been extremely hard won; thus CASCAIDr thinks that these measures could clearly operate *against* the public interest and are not necessary in a democratic society. It could be said that the only people hereby protected, by these particular aspects of the emergency Bill, are councils and central government's coffers, from the inconvenience of another nationwide reimbursement project and consequential bail-out from the Treasury.

This unexpected opportunity to get rid of the social care safety net was probably beyond the wildest dreams of even the most enthusiastic 'small state' proponents. But it is not what Britain deserves, especially not from a government that has promised #**Whatever It Takes**.

Secondly, anyone who has got this far is referred to a similar and independent view from public law barristers about the enormity of the proposals covered in this briefing, which can be flagged up when lobbying MPs:

https://www.11kbw.com/knowledge-events/news/the-coronavirus-bill-schedule-11/

The group's ideas for improvements are as follows, to which CASCAIDr can only say Hear, Hear!:

a. Retaining the relevant social care duties but amending their application **so that local authorities are only required to implement them as far as reasonably practicable.** Where the draft Bill says the local authority does not have to comply with a duty, the new drafting would say that the local authority has to comply with the duty only to the extent **reasonably practicable.** The 'reasonably practicable' rider would not apply where there were anticipated ECHR breaches.

b. Alternatively, requiring the local authority, before treating the relevant social care provisions as disapplied, to be satisfied that compliance with the duties is **incompatible with either compliance with other statutory duties or with the efficient use of its resources.**

c. In any event, **adding an express requirement to carry out an assessment to verify whether there would be any ECHR breach.** This would most likely be implied as a matter of law on the basis of the current drafting, but it would be clearer for local authorities for it to be spelled out on the face of the legislation – the current draft requires local authorities to be satisfied there would be no ECHR breach but says they have no duty to assess any individual's needs, **which would be the only way to ascertain this.**

Lastly, CASCAIDr's Chair, Fiona Bateman, has identified that the Bill may fundamentally change the way that Safeguarding practitioners operate and has offered up this advice:

There is already good guidance available about how to undertake social care functions adopting a Human Rights based approach because the duties owed to the population at large are now broadly similar to those owed to people with 'nil recourse to public funds'. This guidance is available at http://www.nrpfnetwork.org.uk/guidance/Pages/default.aspx.

We can also highlight to those who are worried about getting access to social care at this time that there are a lot of on-line assessment tools that help those who are **not qualified social workers** to set out the information that social work council staff will need to understand to prioritise provision. For example, https://issuu.com/voicesofstoke/docs/careacttoolkit_typeset_ - this is geared towards rough sleepers, but will work in any setting.

Belinda Schwehr

CASCAIDr, www.cascaidr.org.uk

March 20, 2020

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