



# Getting Help from Social Services

A Simple Guide to the Law\_

by  
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## **Disclaimer and Copyright Notices**

This booklet is designed to provide a simple overview of community care law. It is not intended to be a complete and authoritative statement of the law. Legal advice should be sought to confirm the application of information in this booklet to any specific legal situation.

The law is generally stated as at 1<sup>st</sup> April 2005. The complaints procedure described was in draft form at that date, and is expected to take effect from 1<sup>st</sup> October 2005. Every effort has been made to include recent developments in the law, including case law and practice, where these are known.

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### ► A Note On Some Terms And Phrases Used

**“Community Care”** – is defined on the next page.

**“Health Services”** – This booklet explains that community care services include health services. Community care law says that social services are responsible for deciding whether health services are needed as well. Therefore the focus of this booklet is on the duties of social services.

**“The Law”** - Community care law is found in a number of different places. This booklet just refers to them all as “the law”, but the most important are:

- ✓ Acts of Parliament and regulations passed by Parliament.
- ✓ A special type of legal guidance issued to social services, sometimes called "statutory guidance".
- ✓ Court cases that have decided what the Acts, regulations and guidance mean in practice.

**“Legal help”** – At a number of places, this booklet suggests that you may want “legal help” or “legal advice”. This is a suggestion that you may benefit from advice through the Community Legal Service. There is more information about the Community Legal Service on pages 4-8.

**“Social Services”** – Throughout this booklet reference is made to “social services”. Many local authorities no longer use that term. For example, in Birmingham the relevant department is now called “Social Care and Health” and in Sandwell “Social Inclusion and Health”. In this booklet, any reference to social services is to whichever part of the local authority is responsible for community care.

## Introductory...

## ...what is community care law?

This booklet has been funded by the Community Legal Service. The following pages tell you more about the Community Legal Service.

This booklet is about an area of law that is termed "community care law". Community care law can be described as:

**The law about the rights of individuals to get help from social services and health services to deal with their problems, and to help them to live in the community, return to the community or care for other people in the community. This includes residential care.**

Some of the groups of people who may need this kind of help are:

- ❖ People who have a physical illness or disability
- ❖ People with mental health problems
- ❖ People with learning disabilities
- ❖ Carers, including carers of children with disabilities

Some of the kinds of help that these people may need are:

- ❖ Help to get a social worker
- ❖ Help to get an assessment of need carried out
- ❖ Help with adaptations to property
- ❖ Ongoing help from a carer
- ❖ Respite care, to give carers a break.
- ❖ Specialist equipment
- ❖ Appropriate therapy, counselling or group work
- ❖ Support for carers

This booklet is not aimed at legal advisers. It is aimed at ordinary people who may benefit from social services help. It is also hoped that it will be helpful to people and organisations such as the following:

- ❖ Carers of people with disabilities, and carers' organisations
- ❖ Advocates and advocacy organisations
- ❖ Day care and day centre staff
- ❖ Support groups
- ❖ Schools and religious organisations and other voluntary organisations working with these groups

## Introductory...

## ...the Community Legal Service

### ► **What Is The Community Legal Service?**

The Community Legal Service is a service made up of a network of different kinds of organisations. Much like the National Health Service is made up of a network of different trusts, hospitals, health centres etc, so the Community Legal Service includes citizens advice bureaux, solicitors, law centres, independent charitable and voluntary advice centres, and local authority run advice services. What the legal services in the network have in common is:

- ✓ They all provide advice to individuals in need
- ✓ They all provide advice to people who cannot afford to pay for legal advice on a private basis
- ✓ They have all been approved as meeting a national quality standard

Just as the National Health Service has generalist services such as GPs, and specialist services such as those found in hospitals, and indeed telephone advice services like NHS Direct, so too the Community Legal Service has a range of types of service. Some are general and some are specialist. Some provide advice only, others do casework and provide practical assistance, still others do specialist work including representing people in court. Some are local, some are regional and some are national.

In choosing an organisation that is suitable to meet your needs, you can choose an organisation in terms of where it is, what level of service it provides, and what area or areas of law it specialises in.

### ► **What Is Community Legal Service Direct?**

Community Legal Service Direct is a new easy-to-use service that can help you deal with your legal problems. It provides free information, help and advice direct to the public on a range of common issues.

On the website at [www.clsdirect.org.uk](http://www.clsdirect.org.uk) you can:

- ✓ Search for a quality local legal adviser or solicitor
- ✓ Ask a question or choose a common topic and be directed to the best advice websites

- ✓ See if you are eligible for legal aid funding by using the online calculator
- ✓ View and print independently-written legal information leaflets on a range of popular topics
- ✓ Listen to recorded messages about common legal problems 24 hours a day

As well as using this website you can call **0845 345 4 345** to:

- ✓ Get free initial advice from a qualified legal adviser about Welfare Benefits, Debt or Education between 9am and 5pm weekdays (if you call outside office hours, just leave a message and you will be called back) If you are eligible for Legal Aid you can get further free legal help with your case by phone and post
- ✓ Find quality local advice services for other types of problems
- ✓ Order legal information leaflets
- ✓ Listen to recorded messages about common legal problems 24 hours a day

All advice given is confidential and independent. Calls to the helpline can be made for the price of a local phone call from anywhere in England and Wales. Mobile users should check the cost of calling with their network.

### ► **The Boundary Between Community Care Law And Other Specialist Areas Of Law**

The Community Legal Service sets the boundaries for the different legal specialisms – that is it sets the rules about which kind of legal specialist should deal with which kind of legal problem. The intention is that every legal problem is dealt with by a specialist in that area, and that there should be no doubt about which specialist deals with what problem.

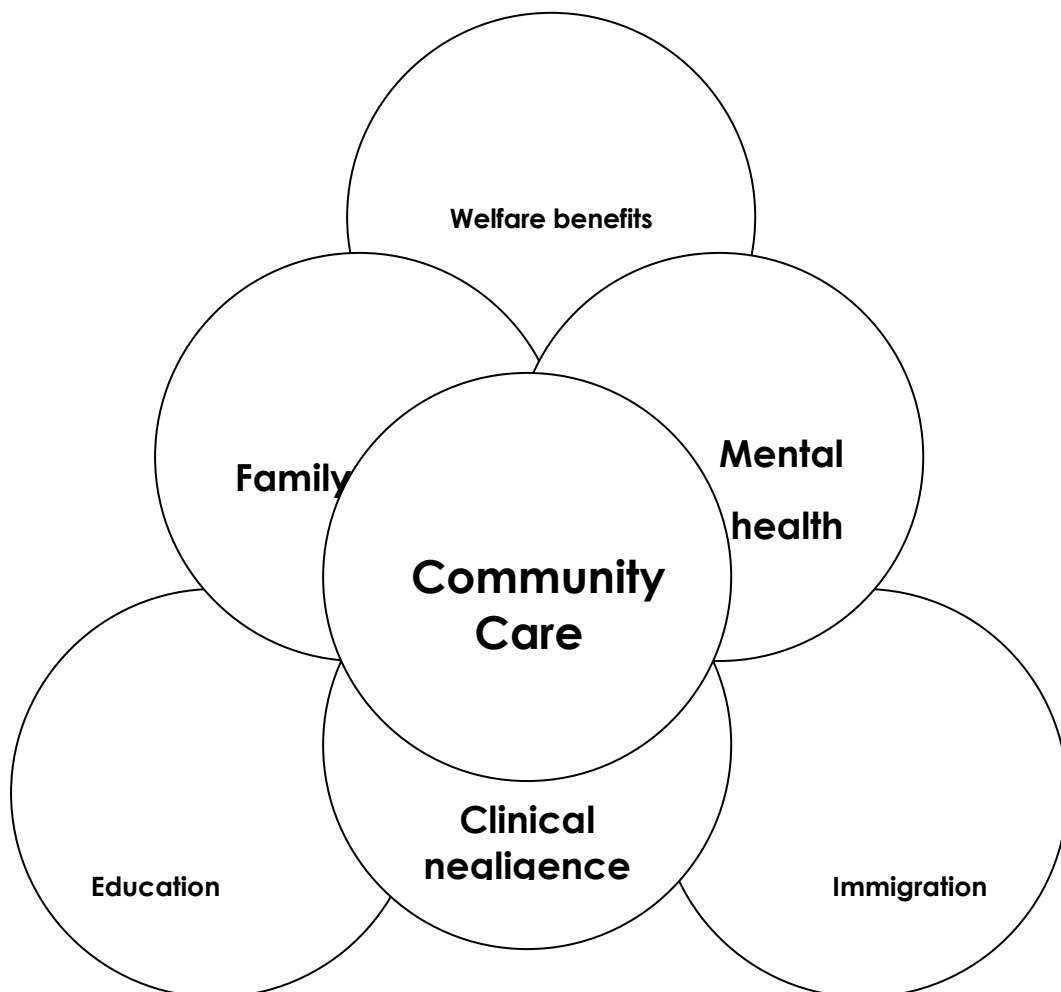
In practice, there are a number of other specialist areas of law that are very closely related to community care law. The diagram on the next page is intended to set this out.

The specialist areas that immediately surround the circle are other specialist areas that also deal with the law about social services and health services:

- ✓ **Mental health** is a specialism that deals in particular with the law relating to compulsory detention of people with mental health difficulties, and the various remedies available. **Nonetheless, all of the rights and remedies in this booklet are relevant to people with mental health difficulties, and can be dealt with by community care advisers.**

- ✓ The **family** specialism deals with different aspects of the work of social workers. In particular, the law about child protection and care proceedings falls within this specialism.
- ✓ **Clinical negligence** is the area of law that deals with malpractice cases against health bodies.

**TABLE A – Boundary between community care law and other specialist areas of law**









Going slightly wider, the diagram shows a number of other areas that touch upon the community care circle. These cover distinctly different areas of law, but ones that people often need at the same time as they have community care problems. For example:



- ✓ Issues around the funding of residential care may include both welfare benefits and community care points.

- ✓ A person who is destitute because of their immigration status will need immigration advice to deal with their immigration status, but may need community care advice to deal with their destitution.
  
- ✓ A child's needs arising out of a disability will be assessed in an educational context, and if there is a dispute about a statement of special educational needs, an education specialist will be needed.

## Introductory... ...sources of specialist advice

The following box shows you the information currently available about **all specialist providers of community care legal advice in the West Midlands:**

<b>TABLE B – Specialist providers of community care legal advice in the West Midlands</b>	
	<a href="#">The Community Law Partnership</a> 4 <sup>th</sup> Floor, Ruskin Chambers, 191 Corporation Street, Birmingham B4 6RP 0121 685 8595, 0845 120 2980
	<a href="#">B-MAG (Birmingham Money Advice and Grants)</a> Dolphin House, 1st Floor, 54 Coventry Road, Birmingham B10 ORX 0121 766 7466
	<a href="#">B-MAG (Birmingham Money Advice and Grants)</a> <b>Outreach Service</b> Bangla Project (Bangladeshi Community), 97 Walford Road, Sparkbrook Birmingham B11 1NP 0121 766 7466
	<a href="#">Public Law Solicitors</a> King Edward Chambers, 166b Alcester Road, Birmingham B13 8HS 0121 256 0326
	<a href="#">B-MAG (Birmingham Money Advice and Grants)</a> <b>Outreach Service</b> Welsh House Farm Community Flat, 114 Blandford Road, Quinton Birmingham B32 2LT 0121 766 7466
	<a href="#">B-MAG (Birmingham Money Advice and Grants)</a> <b>Outreach Service</b> Druids Heath, Maypole Centre, Idmiston Court, Druids Heath Birmingham B14 5NJ 0121 766 7466

	<p><a href="#">B-MAG (Birmingham Money Advice and Grants)</a>  <b>Outreach Service</b>                  Bartley Green Medical Centre, 14 Romsey Road, Bartley Green B32 3PR                  0121 766 7466</p>
	<p><a href="#">Coventry Law Centre</a>                  The Bridge, Broadgate, Coventry, CV1 1NG                  024 7622 3053</p>

This booklet has been prepared by one of the organisations in the box above, B-MAG. You will notice that B-MAG has a number of "outreach services". These are where local surgeries are provided to deliver legal advice through local community organisations. B-MAG is expanding its outreach services in the Black Country (Dudley, Sandwell and Wolverhampton in particular) and if you think your organisation might benefit from any kind of outreach service, please contact B-MAG to discuss this further.

## Getting Help from Social Services...

## ...An Overview

First, the bad news.

Help from social services is not an entitlement like social security benefits. You cannot just look up the rules and work out that you have a right to a particular package of services.

Nor do you have a right to a social worker in the same way as you might have a right to register with a doctor or for a school for a child.

Nor is there a system of appeals, in which an independent tribunal reviews your package of care.

But there is good news, and you do have rights. Once you understand the way in which community care law works, and how it differs from systems with entitlements and appeals, you will realise that there is actually a lot that can be done to help people, and that there are many people who could be getting a better service with help.

The package of care you get is decided by a process of assessment and planning. The following pages set out some of the common problems that people encounter with assessment and planning, and what the law says.

If you are unhappy with the decision, there may not be an appeal tribunal, but there are a number of different ways of putting right things that have gone wrong. These are explained towards the end of this part.

## Getting Help from Social Services... ...getting an assessment

Assessments are normally carried out by social workers or occupational therapists.

An assessment is a process in which someone spends time with you to work out and discuss and agree with you the full extent of all of the possible services that could be provided to you as community care services in order to help you to manage. An assessment is about what you **need**. A decision about what help is to be **provided** comes later.

Although people do not have a right to a social worker, it would be very unusual indeed not to have a right to assessment. That is because the law is written to make it easy for people to have an assessment.

**The law says that social services must assess anyone who may need services from them.**

There is no special way to request an assessment. You can request one yourself, or anyone can request one for you. A request does not have to be in writing or on a particular form. In fact, if social services know that you need help, they should assess you even if nobody has made a request. But in practice, it is probably helpful that somebody makes a written request for an assessment.

Many people who have a right to an assessment still have difficulty getting one. Here are some of the common problems, and what the law says about them:

### ► **You Are Told To Go Somewhere Else**

Sometimes you are told that you have gone to the wrong social services office. The law says that you should be helped to be put in touch with the right office. If you find you are being shunted between offices, none of which seem to want to help you, then you are probably being unlawfully denied an assessment and should get legal help.

Sometimes social services want you to approach health services directly – for example for aids and adaptations and other equipment. There can be advantages in approaching the health service directly. Services provided by the health service are generally free, while social services are entitled to make charges. This is discussed more in the section on charging below.

## Getting Help from Social Services

But the law says that it is social services which is responsible for the assessment, and that social services should invite health services to join in as necessary. Sending you off to the health service yourself does not meet this requirement.

### ► **You Are Told That You Need A Different Kind Of Assessment**

This is a particular problem for people with mental health difficulties. There is a special kind of assessment for people with mental health difficulties, called the Care Programme Approach. The health service takes the lead in this kind of assessment.

Sometimes, social services redirect someone with mental health problems to a specialist mental health team called a Community Mental Health Team, as soon as they know that there are mental health problems.

**People with mental health difficulties are entitled to a normal community care assessment in the usual way. It is wrong to insist that they are assessed under the Care Programme Approach. The Care Programme Approach is for people with "severe and enduring mental illness". Many people with less significant mental health problems, or where mental health problems are only part of their problems, can find that they are effectively denied an assessment of their community care needs if they are told that they must use this approach.**

If you experience this kind of problem, you may well need legal help to get an assessment.

### ► **You Are Told That You Don't Qualify For Services**

Sometimes, you are told that you don't qualify for services, even before an assessment has been carried out. There are a number of excuses that can be given, but what they have in common is that they are used as an excuse not to carry out an assessment of your needs in the first place. This is unlawful.

Some specific examples are:

- ✓ **Being told that you won't qualify for services, because the kind of thing that you think you need is something that the authority does not provide** – social services should assess whether you need it and whether it is necessary anyway. If it is necessary for you, they may have to start providing it even if they had never done so before!

- ✓ **Being told that you are not entitled to help because you would have to pay** – in effect, you are being encouraged to buy what you need privately. This is wrong. Social services often have to provide people with equipment and services free of charge, and even if people have to pay there are a number of different ways in which they can be helped with the cost. It is not possible to know whether any of this applies until an assessment has been carried out.
- ✓ **Being told that a different local authority is responsible for you** – a different local authority may be responsible, but this may just be an excuse. Whoever is responsible for providing services, you can normally be assessed by the authority in the area where you are living.
- ✓ **Being told that you are not entitled to services, because you are subject to immigration control** – even people subject to immigration control can be entitled to services. In particular, you can be entitled to services because you have human rights, whatever the law would have said otherwise. Social services cannot know whether you have such rights without carrying out an assessment.

There is a common thread running through these examples. These are all examples of circumstances in which social services might not have to provide you with services. But in no case can social services be certain without carrying out an assessment. In any case, you have a right to an assessment of your needs even if you will not subsequently be provided with services.

If you are faced with these kinds of excuses, you may need legal advice.

### ► **You Are Told That You Have Been Assessed And That You Do Not Qualify For Services**

This is only slightly different from being told, without an assessment, that you do not qualify for services. Sometimes, you may find it very difficult to tell the difference between the two!

Sometimes, social services do carry out an assessment the very first time that you contact them. This is sometimes known as a "contact assessment".

The law says that the level and depth of an assessment must be appropriate to your individual needs. There are some circumstances in

## Getting Help from Social Services

which a simple contact assessment is sufficient, because your needs are so straight-forward and limited.

**However, if you think that the assessment was inadequate for your needs, or if you think the assessment was an excuse to refuse you services, as in the examples above, then you may need legal help.**

### ► ***You Are Told That There Is A Wait For An Assessment***

Usually, the law does **not** say within what timescale an assessment must be carried out. But it should be within a "reasonable" timescale. And what is reasonable depends not just on the waiting list, but also on your individual needs. If social services operated a simple waiting list which has no regard to the nature and urgency of your needs, that would be unlawful.

If there are reasons why your need is particularly urgent, it is very important that you tell social services this when you ask for an assessment, and that you explain the urgency.

Occasionally, there are timescales. For example, assessments of older people should begin within 48 hours and be complete within one month.

## Getting Help from Social Services... ...the decision about what to provide

Once your needs have been assessed, social services need to decide which of your needs are going to be met. You will remember that the correct approach to assessment is to identify all of your needs that could possibly be met, and then decide which are going to be met. It follows that social services does not have to meet all of the needs that they identify you as having.

In urgent cases, your needs can be met before an assessment has been carried out.

If you have to pay for your services, social services should not make meeting your needs conditional upon being paid first. They must provide what you need anyway, and can then take appropriate steps to recover any contribution from you.

Social services must meet your needs if they are:

- ✓ Eligible needs
- ✓ Necessary for your human rights
- ✓ Necessary because of your disability

Each of these is considered below:

### ► **Eligible Need**

The basic idea is that the needs you are assessed as having are split into eligible need and unmet need. Your assessed needs are placed in bands, depending on how important it is to meet them. There are four bands: critical, substantial, moderate and low needs. Social services will have made a decision, having considered the money available, about what level of needs they are able to meet. The needs that you have that come high enough are eligible, and the needs that do not come high enough will be unmet.

Your eligible needs must be met once they have been identified.

If the result of this system seems to be unfair, then it is possible that you disagree with the way in which social services have banded and prioritised your needs. It is possible to challenge this, and you may need legal help to do so.

### ► **Services Necessary To Protect Your Human Rights**

The law says that if providing you with services is the only way of protecting your human rights, then that is what social services must do.

The problem with this is that it must be **necessary**. It will only be **necessary** if it is the **only** way of protecting your human rights. If social services can show that your human rights could be protected in some other way, then you cannot rely on this rule.

For example, if your human rights would be adequately protected by sending you back to another country from which you came to this country, then social services could offer to help you by helping to send you back instead of by providing you with services in this country.

### ► **Services That Are Necessary Because Of Disability**

Certain services may be necessary because of your disability. Table C and Table D list some kinds of services that may be necessary, using the words of the law.

#### **TABLE C - Section 23(1) Housing Grants Construction and Regeneration Act 1996**

The purposes for which an application for a disabled facilities grant must be approved... are the following-

- (a) facilitating access by the disabled occupant to and from the dwelling or the building in which the dwelling or, as the case may be, flat is situated;
- (b) making the dwelling or building safe for the disabled occupant and other persons residing with him;
- (c) facilitating access by the disabled occupant to a room used or usable as the principal family room;
- (d) facilitating access by the disabled occupant to, or providing for the disabled occupant, a room used or usable for sleeping;
- (e) facilitating access by the disabled occupant to, or providing for the disabled occupant, a room in which there is a lavatory, or facilitating the use by the disabled occupant of such a facility;
- (f) facilitating access by the disabled occupant to, or providing for the disabled occupant, a room in which there is a bath or shower (or both), or facilitating the use by the disabled occupant of such a

- facility;
- (g) facilitating access by the disabled occupant to, or providing for the disabled occupant, a room in which there is a wash hand basin, or facilitating the use by the disabled occupant of such a facility;
  - (h) facilitating the preparation and cooking of food by the disabled occupant;
  - (i) improving any heating system in the dwelling to meet the needs of the disabled occupant or, if there is no existing heating system in the dwelling or any such system is unsuitable for use by the disabled occupant, providing a heating system suitable to meet his needs;
  - (j) facilitating the use by the disabled occupant of a source of power, light or heat by altering the position of one or more means of access to or control of that source or by providing additional means of control;
  - (k) facilitating access and movement by the disabled occupant around the dwelling in order to enable him to care for a person who is normally resident in the dwelling and is in need of such care;
  - (l) such other purposes as may be specified by order of the Secretary of State.

These services are all about adaptations to property. Generally, if you have been assessed as needing these things, then they are necessary. What is more, you may be eligible for a grant called a Disabled Facilities Grant to meet the cost.

Problems with getting Disabled Facilities Grants are notorious, but the law says not only that they must be offered, but also that the grant decision must be made within 6 months.

Here are some typical problems:

- ❖ **Getting hold of the forms.** Many social workers don't even know about Disabled Facilities Grants. Others wait until you have got to the top of a waiting list before they tell you about the forms. Others give you forms that are not really Disabled Facilities Grants forms at all.
- ❖ **Problems with the assessment.** There are three different types of assessment involved. There is an assessment of the needs arising from out of your disability. There is an assessment of your property and its suitability for adaptations. And there is an assessment of your means, and what you can afford to contribute. That leaves a lot of scope for disagreeing with the conclusions of a Disabled Facilities Grant application.

**Getting Help from Social Services**

If you are having problems making an application for a Disabled Facilities Grant, or with the decision on a Disabled Facilities Grant, then you may need legal help.

**TABLE D - Section 2(1) Chronically Sick and Disabled Persons Act 1970**

- (a) the provision of practical assistance for that person in his home;
- (b) the provision for that person of, or assistance to that person in obtaining, wireless, television, library or similar recreational facilities;
- (c) the provision for that person of lectures, games, outings or other recreational activities;
- (d) the provision for that person of facilities for, or assistance in, travelling to and from his home for the purpose of participating in any service provided under arrangements made by the authority...;
- (e) the provision of assistance for that person in arranging for the carrying out of any works of adaptation in his home or the provision of any additional facilities designed to secure his greater safety, comfort or convenience;
- (f) facilitating the taking of holidays by that person...;
- (g) the provision of meals for that person, whether in his home or elsewhere;
- (h) the provision for that person of, or assistance to that person in obtaining, a telephone...

This is another list of services that must be provided wherever they are **necessary** because of a disability.

The problem with this list is that the law says that many of the things on this list are often not necessary. They are just desirable. But if you can show that they are necessary and not just desirable, then you have a right to them.

## Getting Help from Social Services... ...being paid and being charged

### ► *Direct And Indirect Service Provision*

Although one-off help (aids, adaptations and equipment) has been looked at in detail, the general principles that have been discussed also apply to regular or ongoing care.

Social services can provide you with care directly or indirectly, or by means of direct payments. Providing you with care directly means that social services runs the care facility (for example, residential care home or day centre), and you use their facilities. Providing you with care indirectly means that some other organisation runs the facility that you use, but social services organises for you to use it, and possibly pays for it as well.

### ► *Direct Payments*

Direct payments can be thought of as a particular form of indirect service provision. Social services simply give you the money, and leave you to arrange and buy your own care package, from wherever you choose.

Anyone with assessed community care needs should be offered direct payments. Where carers have assessed needs, they should also be offered direct payments. In fact, research shows there are wide differences in the take up of direct payments, and this is possibly due to social services not pushing direct payments imaginatively with some groups. In particular, there is a very low take up among people with mental health difficulties and older people.

Running direct payments does involve a certain amount of responsibility. For example, you may use agency staff, or even employ your own staff as carers. Some people have set up their own companies to run direct payment programmes. But you can get help with these practical difficulties and responsibilities, and direct payments are intended to give you flexibility and choice.

If you are interested in direct payments, but you are having difficulties getting an agreement to direct payments, or if you are having difficulties in running direct payments, you may need legal help.

### ► ***Paying For Services – Generally***

As a general rule, health services are free, but social services are not. But that doesn't mean that social services charge you the actual cost of services. What you pay for social services is assessed based upon your ability to pay.

Things can get very complicated if you are asking social services for money, for example for direct payments, and social services is asking you for money under the charging rules at the same time. It can get complicated as to who owes who, and the consequences. Although this should not happen, in extreme cases your care package may be disrupted. If you have these difficulties, you may well need legal help.

### ► ***Paying For Services – Residential Care***

There are very strict and very detailed rules about charging for residential care. Social services must follow these rules.

A very well-known problem concerns whether or how the value of the house that you live in is taken into account when working out what you can afford to pay for residential care. Many people fear that they will be told that they must sell their house. Different priorities compete, with the person who needs care being concerned about their children's inheritance, while social services are concerned about following the rules on what you can afford to pay.

You may find it helpful to get legal advice either before or after you go into residential care if you are concerned about the treatment of the value of your home, or about what you have been asked to pay.

NHS continuing care is free – see below.

### ► ***Paying For Services – Services That Are Free***

For non-residential help from social services, the rules are more flexible.

In certain situations, services should be provided free of charge. In particular:

- ✓ **"NHS continuing care"** – if you were being provided with free services by the National Health Service, and if your assessed care needs are very intensive and predominantly health-related rather than social care needs, then the National Health Service may have to continue

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to meet the whole of the cost of your care needs. These rules are very complicated, and if you think or hope that they apply to you, you may need legal advice.

- ✓ **"Section 117 Aftercare"** – aftercare for certain people who have been compulsorily detained under the Mental Health Act is also free.
- ✓ **"Intermediate Care"** – short-term care for up to six weeks is often free.
- ✓ **Equipment, aids and adaptations** – house adaptations costing under £1000 and disability aids and equipment should be available free of charge.

### ► **Paying For Services – The 'Fairer Charging...' Rules**

In addition to these specific exceptions, social services do not **need** to charge for non-residential services. But they are allowed to.

If social services are going to charge, then the law says that they must have regard to what you can afford to pay, which includes your outgoings as well as your income. They should work out a single charge for all the services you need, rather than charging you for each part separately.

The new rules are called the 'Fairer Charging...' regime. Fairer Charging does give rise to disputes. In particular, many people think that their expenditure has not been fairly assessed. It is possible to challenge the assessment under the Fairer Charging regime.

## Getting Help from Social Services... ...when things go wrong

It was stated at the outset that although there is no right to an appeal to an independent tribunal about your entitlements, there are still things that can be done when you have problems.

The two main options are to use the complaints procedure, or to go to court.

### ► **The Complaints Procedure**

What is described below is the new complaints procedure that is due to come into force in October 2005. If you need to complain before then, you will need to find out about the old procedure.

If there is a delay in implementing the new procedure (it has already been delayed once), you may need to know the old procedure even after October 2005. Certain complaints involving children also use a different complaints procedure.

But it is anticipated that most complaints by people reading this booklet will be under the new complaints procedure described below:

Surprisingly, the complaints procedure does not actually define a complaint. But you should assume that any formal expression of your dissatisfaction with social services should be dealt with as a complaint. This does not necessarily mean a written complaint, but it is certainly helpful if you have set out your dissatisfaction in writing. Equally, your complaint should be treated as valid whether you communicated it to the right person or not in the first instance. If you are trying or have tried to formally express your dissatisfaction with social services, and they do not appear to be treating it as a complaint under the procedures set out, you may need legal help.

- ✓ The first stage is an **informal resolution**. Quite properly, the emphasis initially is on trying to put things right quickly and effectively and without the disruption to your relationship with social services that might result from more formality. An informal resolution should normally be agreed within 10 days, although this can be extended. The outcome should be communicated in writing.

## Getting Help from Social Services

- ✓ The second stage is a **formal investigation**. If you want to go on to this stage you need to request it within 2 months of the outcome of the informal resolution stage. A formal investigation should be completed within 25 days. Once again, this can be extended. Once again, the outcome will be communicated to you in writing.
- ✓ The third stage involves an investigation by the **Commission for Social Care Inspection**. This is an independent national body that regulates social care organisations. This stage of a completely independent investigation is a new feature of the complaints system that is coming into place. Once again, if you want to go on to the third stage, you need to request this within 2 months of the written outcome to the second stage.

There are also special rules for "complex complaints", which involve a combination of social services and health services.

### ► **The Courts**

The courts can be used, through a procedure called "judicial review", when there is no effective alternative remedy. Going to court involves legal costs and court costs and the risk of being ordered to pay costs if you lose. It is therefore most unlikely that you would contemplate going to court without a solicitor, or that you would contemplate going to court without the benefit of public funding ("legal aid"), to protect you from the financial risks.

But if you do take legal advice from a solicitor, they may well advise you about judicial review. They may conclude that the complaints procedure described above is not an effective alternative remedy. The most likely reasons for this are:

- ✓ **It is too slow.** If you have very urgent needs, the court can grant an order against social services very quickly indeed, while the complaints procedure could take months to reach the same point.
- ✓ **You disagree about the law.** If you think the law gives you some rights, and social services does not agree, the court can rule on the interpretation of the law. The complaints procedure cannot.
- ✓ **The complaints procedure itself is not working.** If you are trying to use the complaints procedure, or have tried to do so, and it is just not being properly followed, it may be necessary to get a court order.

### ► **Other Remedies**

Although the complaints procedure and the courts are the main remedies, there are also other people to whom you can complain, such as the Ombudsmen and the Monitoring Officer.

There are also regulatory bodies that regulate social care workers and social care organisations. On occasions you may want to complain about the conduct of an individual social worker or about a whole practice of a social care organisation. One or other of the General Social Care Council or the Commission for Social Care Inspection may be an appropriate regulator, and a legal adviser would identify an appropriate course of action.

## Some Topical Issues

### ► **Advocates**

In the language of social services, an advocate is generally somebody who helps you to communicate what it is you want to say and to protect and promote your rights. This kind of advocacy has been around for a long time, but it is increasing in prominence. The Government has legislated to promote advocacy services, in particular among children, and more recently among people who have limited mental capacity. You may want to find out more about advocacy services that are available locally.

### ► **Capacity**

In April 2005, a new law about mental capacity was passed. It is intended to set out clearly and in one place the rules for making the decisions about people who can't make decisions for themselves. If this affects you or someone you look after, you might want to find out more about your new rights and the new law.

### ► **Carers**

Recent new laws have also promoted the rights of carers. In this booklet, a system of assessment, planning and service delivery has been described. It is now possible for carers to have an assessment of their needs in their own right, to have a plan for meeting those needs in their own right, and to receive services in their own right. This includes receiving direct payments in their own right. If you are a carer, you may want to know more about your new rights.

### ► **Complaints**

A new complaints procedure is due to take effect from October 2005. The new procedure was originally due to take effect from April 2005 but has been delayed. Unless there are unexpected changes, the procedure will be that described in the section above on 'When Things Go Wrong'.

### ► **Charging: The 'Fairer Charging' Regime**

The 'Fairer Charging' regime has now been in place for a couple of years, but in some areas there are still teething problems. The regime was described above in the section on 'Being Paid and Being Charged'. Some

of the problems include disputes about how income and outgoings are assessed, and a too rigid application of the guidance. There is some room for flexibility based upon individual circumstances. If you have been adversely affected by a charging decision, you may want to know more about the operation of Fairer Charging, and about reviews of decisions.

### ► **Destitution**

This has been a major and growing area of work for community care advisers in recent years. Deliberate government policies, in particular in relation to people subject to immigration control, have left increasing numbers of people completely destitute. Where these people are vulnerable, and are people to whom social services might owe a duty, social services have had to plug the gap, and provide packages of care which include basic accommodation and subsistence.

If you are destitute and need help to get community care services, including basic accommodation and subsistence, you will almost certainly need specialist legal advice. There are several reasons for this:

- ❖ The law is exceptionally complicated
- ❖ The law keeps changing very fast
- ❖ It is notoriously difficult to persuade social services to provide appropriate packages of care

### ► **Mental Health Bill**

A Bill is a proposed Act of Parliament. The government was in the process of pushing a Mental Health Bill through Parliament when the 2005 election was called, and the Bill was "lost" – in other words, the session of Parliament came to an end before the Bill was passed as law.

The Bill was very controversial. For example, the mental health charity MIND said that "instead of promoting people's rights, many of the planned changes will have a negative impact on the lives of people who experience mental distress". An alliance of 70 organisations, the Mental Health Alliance, was formed to influence the Bill.

The government intends to make a fresh attempt to pass a new law in this area. You might want to find out more if you could be affected.

### ► **Reassessments Of Need**

While the problems getting an assessment of need have been described in detail above, reassessments can also cause problems. In principle, a person's needs should be continually kept under review. In practice, reassessments are sometimes used – and are sometimes allowed to be used – as a means of reducing services. Even more significantly, this sometimes happens as a result of changes in policy and guidance, rather than a decrease in a person's needs.

If you are facing services being reduced or withdrawn as a result of the reassessment of your needs, you may want to find out more about your rights to challenge such cuts.

### ► **Regulation Of Social Care**

The government is involved in pushing forward a major initiative to regulate the social care workforce. A new regulator, the General Social Care Council has been set up. All social workers should have been registered with the General Social Care Council by 1<sup>st</sup> April 2005. Only registered social workers should be able to use the title "social worker". You can look up whether a social worker is registered on the register at [www.gsc.org.uk](http://www.gsc.org.uk).

Eventually, not only social workers but anyone working in social care will need to register with the General Social Care Council.

There are codes of conduct for social care workers and for social care employers. The General Social Care Council is responsible for policing the effectiveness of these codes of conduct. All of this effectively gives you new rights and remedies if you experience unprofessional conduct by social care workers or social care organisations.

### ► **Residential Allowance Abolition**

The residential allowance was an additional amount of money paid as part of a person's income support when they were in certain forms of residential care. The allowance was abolished from October 2003. The abolition of the allowance is continuing to make waves.

The money that was spent on a residential allowance was transferred to social services. But it was up to social services to decide exactly how the money was to be spent. There was no guarantee that the people who were receiving the money before would receive its equivalent afterwards. Indeed, some of the problems which have arisen have arisen because

people were receiving the residential allowance but were completely unknown to social services.

If you have been affected by the ending of the residential allowance, you may need to take specialist advice on the best tactics for the proper funding of your care package in the future.

### ► **Restructuring Of Social Services**

Social services departments have undergone major reorganisation ("modernisation") over recent years. This reorganisation has tended to have the following effects:

- ❖ Pushing adult social care towards ever closer working with health services. The law now allows social services and health services to work so closely together that they may almost seem to have merged. Sometimes this can cause you problems, and it may be important to remember that the distinct legal responsibilities of social services and health services have not changed.
- ❖ Children's social services are being pushed ever closer towards education services. The central government's Department for Education and Skills has taken over lead responsibility for children's social services, just as the Department of Health has responsibility for adult social services. It is also proposed that in coming years the education regulator OFSTED will regulate children's social services, and the health regulator the Healthcare Commission will take over regulation of adult social care.
- ❖ As a consequence of both of these changes, just as social workers are working ever more closely in partnership with other agencies, the profession itself is becoming ever more acutely divided. Recent changes in the law have required local authorities to appoint a single director responsible for both education and children's social services. As a result, a different director tends to take responsibility for adult social care, creating a clear division in what were once almost universally known as "social services departments".

### ► **User Independent Trusts**

User independent trusts were an idea that was approved by the high court. They can be distinguished from, but also usefully compared and contrasted with, user controlled trusts. User controlled trusts are a way of using direct payments, discussed above under the heading 'Being Paid and Being

Charged'. With a user controlled trust, the service user controls the budget and chooses how to spend the budget on his or her social care needs.

User independent trusts are typically appropriate for someone who lacks the capacity to operate a user controlled trust. Basically, direct payments are still made, but they are made to somebody independent, who then runs the direct payments on behalf of the service user. User independent trusts thereby enable the independence, flexibility and choice that comes from direct payments to benefit people who could not run a direct payment package for themselves.

If you believe that anyone you know of or care for or work with might benefit from a user independent trust, you may like to find out more about them. Many local authorities have yet to come to grips with the possibilities of user independent trusts.



## **About B-MAG and the Author**

Allan Norman is a registered social worker and a consultant solicitor. He is a visiting lecturer at the University of Central England and also at the University of Birmingham, where he lectures on the social work programme, teaching social work law for professional practice.

He is employed as the Principal Social Worker/Solicitor at B-MAG (Birmingham Money Advice and Grants).

B-MAG is an independent charitable welfare rights agency that is a part of the Community Legal Service. B-MAG holds the specialist level quality mark for community care advice, as well as for welfare benefits and debt advice. B-MAG is also licensed in these areas, which means that, where appropriate, it is able to take publicly funded court cases through the higher courts to challenge decisions.

B-MAG is an anti-poverty agency which provides social work and legal advice services to individuals and communities in need:

- Obtaining grants from charities and trusts on behalf of individuals
- Providing in-depth debt counselling, welfare rights and community care advice
- Developing and delivering anti-poverty strategies in partnership with local communities.

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