

DISABILITY LAW SERVICE

Factsheet - Coronavirus Act

Impact on Social Care for Disabled People and their Carers

With the situation around COVID-19 constantly evolving, this is a challenging time for us all and our part at Disability Law Service is to ensure that access to justice is maintained.

On 31 March 2020, the emergency **Coronavirus Act 2020** came into force.

The Act is intended to ease duties on public authorities and provide them with the flexibility needed to respond to the challenges created by the impact of the coronavirus on our society.

The Act allows local authorities to make significant changes to their social care duties but only where these can be fully justified. Local authorities have been given the power to reduce individual social care packages. Each local authority can reduce care packages in proportion to the level of stress on the service. The power is NOT automatic. It cannot be used unless there is significant loss of staff and / or significant increases in the demand for services (due to the virus). Local authorities are expected to provide full services for *as long as possible*.

If a local authority can no longer cope (because of significant staff losses or increased demand) they can *decide* to use the power. If they do, they must tell you. The power enables authorities to prioritise delivery of the most important services. They cannot reduce a care package (or refuse new care) if it would breach a person's human rights.

This factsheet provides further details below.

Local authorities' duties to *assess* and *meet* social care needs

For local authority social care teams, the Coronavirus Act has provided for *possible* relaxing of duties to *assess* and *meet* the care needs of adults and carers for adults and children. The Coronavirus Act provides for local authorities *possibly* relaxing the duties to assess and meet needs if the impact of the virus means they become very stretched i.e. if the virus has led to significant loss of staff or to a significant increase in demand for care services. In those circumstances local authorities can begin to alter the services they provide. But, until then, local authorities must use their best endeavours to maintain all care packages (Government guidance says they must do that until it is "*unachievable or untenable*"). If a local authority finds itself unable to maintain care because of the epidemic, the Act permits it to suspend or cancel some services (Government guidance says, "*for example, home care or supported living*").

If local authorities can no longer cope with maintaining current care packages, they can make the decision to prioritise services. If they do, they have to tell everyone why and what the priorities will be. When they have done that, they can relieve themselves of the lowest priority services, according to local needs. When prioritising, local authorities must act reasonably, ethically and to promote individual wellbeing.¹ Government guidance says formal assessments and reviews (and application of the eligibility criteria) can be relaxed first. Assessment of needs and care planning must continue, but less formally, with staff time focused on meeting needs (not following procedure). And that

¹ s1 Care Act 2014

adult social care teams should use resources and staff time flexibly, and directed according to priorities. Only then can a local authority change a person's care package.

When withdrawing or suspending care services, local authorities must observe their stated (published) priorities. Where a change would breach a person's human rights, that change cannot happen (and care needs must be met). Although it is the local authority's decision on whether a change would breach human rights, this can be challenged. So (for example) if the change to your support meant that you were no longer receiving essential care you had been assessed as needing (for example help with washing, dressing or feeding) then there is a strong argument that it would breach human rights law.

What this means for you

Social distancing and care

We are all under a duty to stay at home as much as possible. The Government has expanded the "medical need" exception to include going out to, "avoid or escape risk of injury or harm, or to provide care or to help a vulnerable person." The Government says social care services should be provided remotely "whenever possible" and personal attendance (to care) should take place only when "absolutely necessary".

Apart from the general duty to stay at home, there are additional duties for people with underlying health conditions, their families, friends and carers – *shielding* duties. Shielding means staying at home at all times and minimising any face to face contact with family, friends and carers for a period of 12 weeks. Families, friends and carers should support the person to maintain shielding. Carers are to visit only to carry out "essential care". The Government says essential care is, "things like help with washing, dressing or feeding." People with underlying health conditions and their carers are to agree a plan to continue that care.

People with coronavirus symptoms (or suspected symptoms) are to stay at home at all times for 7-days (or until symptoms pass, if longer). Family members and other members of the household are to stay at home for 14-days. Contact with each other is to be minimal (particularly for those with underlying health conditions). Carers are still to visit, but wearing personal protective equipment.

What to do

If your local authority has not written to you to say they are prioritising care services under Coronavirus Act, your care should be maintained (so far as is allowed under the social distancing rules). So, speak with your carers and care providers to make sure you have an agreed plan to continue your care. You are entitled to continue to receive care visits and any care that is / can be provided remotely.

If your care is maintained in line with the social distancing rules, any complaint is very unlikely to succeed.

If any of your care is not being maintained, think about whether it could be within the social distancing rules, and if it could, contact your carers and care providers to explain. Try to agree a plan.

If any of your care is not being maintained (and it could be) but you are unable to rectify that, speak with your social worker. Your social worker should intervene on your behalf. If your social worker says the Coronavirus Act removed or relaxed care duties, you should take these steps:

1. Ask the social worker if they mean formal relaxation under the Coronavirus Act or general relaxation because of social distancing rules?
2. If the social worker says “*general*” – explain why the care could be maintained within social distancing rules.
3. If the social worker disagrees, or says “*formal relaxation*” then ask where the local authority has published its “*formal*” explanation.
4. If the social worker is unsure, takes steps yourself to establish if the local authority has taken the necessary steps to formally relax, and change, social care packages.
5. If your local authority has taken the necessary steps – look at the explanation and published priorities to establish if your care is maintained in line with those. If it is, any complaint is very unlikely to succeed.
6. If it is not, or if you think the local authority has not taken the necessary steps, or if you feel at any stage in the process that you need our help – TELEPHONE DISABILITY LAW SERVICE ON 020 7791 9800 AND CHOOSE OPTION 2.

Guidance links

Please see the links below which are useful guidance sources from the Department of Health and Social Care

1. This guidance is for people who are at very high risk of severe illness from coronavirus because of an underlying health conditions who have received letters from the NHS to shield - <https://www.gov.uk/government/publications/guidance-on-shielding-and-protecting-extremely-vulnerable-persons-from-covid-19/guidance-on-shielding-and-protecting-extremely-vulnerable-persons-from-covid-19>
2. This is guidance for anyone who cares unpaid, for a family member or friend due to a lifelong condition, illness, disability, or who cannot cope without their support - <https://www.gov.uk/government/publications/coronavirus-covid-19-providing-unpaid-care/guidance-for-those-who-provide-unpaid-care-to-friends-or-family>
3. This is guidance on social distancing for everyone in the UK & advises on social distancing measures we should all be taking - <https://www.gov.uk/government/publications/covid-19-guidance-on-social-distancing-and-for-vulnerable-people/guidance-on-social-distancing-for-everyone-in-the-uk-and-protecting-older-people-and-vulnerable-adults>
4. This guidance is aimed at local authorities, clinical commissioning groups and registered providers who support and deliver care to people in their homes - <https://www.gov.uk/government/publications/covid-19-residential-care-supported-living-and-home-care-guidance/covid-19-guidance-on-home-care-provision>
5. This guidance is confirming that if you have autism or a learning difficulty, you can leave your home more than once a day, and travel beyond your local area if this is important to your health - <https://www.gov.uk/government/publications/coronavirus-outbreak-faqs-what-you-can-and-cant-do/coronavirus-outbreak-faqs-what-you-can-and-cant-do>