

A Guide to Challenging Care Act Decisions for Adults with NRPF

Who is this guide for?

This guide is for advisers working with adults who have no recourse to public funds and have care needs as a result of physical or mental health problems.

What does 'no recourse to public funds' mean?

Most welfare benefits, homeless assistance and social housing are 'public funds'. Many migrants will have 'no recourse to public funds' (NRPF) which means that they are unable to claim these welfare benefits or get social housing. This includes people who have leave to enter or remain in the the UK with an NRPF condition attached, eg leave to enter as a visitor or leave to remain as a student. It also includes people whose leave to enter or remain is subject to a maintenance undertaking, for instance leave to remain as the adult dependent of someone with settled status. In these situations the term 'no public funds' will be stated on the residence permit. People with no leave to enter or remain, for instance someone who has overstayed their visa, an asylum seeker who has exhausted their appeal rights or an undocumented migrant will also have NRPF.

What is the Care Act 2014?

The Care Act 2014 sets out the responsibilities that Local Authorities have to meet the needs of adults with 'care needs' who are present in their area. Services provided by Local Authorities under the Care Act 2014 are not 'public funds' so they can be accessed by people with NRPF.

To access support under the Care Act 2014 an adult will normally need to have 'eligible needs'. This means that because of a health problem they are unable to achieve at least two of the 'specified outcomes' listed below, and this is in turn having an impact on their wellbeing.

Specified Outcomes

- managing and maintaining proper nutrition, for example being able to prepare and eat food and drink
- maintaining personal hygiene, for example being able to wash properly
- managing toilet needs
- being able to dress appropriately, for example putting on enough clothing to keep warm
- being able to move around the home safely, for example without tripping and falling
- keeping the home clean and safe
- being able to develop and maintain family or other personal relationships
- accessing and taking part in work, training, education or volunteering
- being able to make use of necessary facilities or services in the local community, for example using public transport to get to the shops, place of worship or community centre
- being able to carry out any childcare responsibilities



An individual will be considered to be unable to achieve an outcome if they need help to achieve it or if, even though they could achieve it on their own, doing so would take much longer than would normally be expected or cause them pain, distress or anxiety or would endanger their (or someone else's) health or safety.

Wellbeing

The Care Act 2014 relates 'wellbeing' to following areas:-

- personal dignity
- physical and mental health and emotional wellbeing
- protection from abuse and neglect
- control over day to day life (including over care and support and the way in which it is provided)
- participation in work, education, training or recreation
- social and economic wellbeing
- domestic, family and personal relationships
- suitability of living accommodation
- the individual's contribution to society

Care Act Assessments

In order to determine whether or not they have a duty to meet an adults needs, the law requires local authorities to carry out a 'needs assessment' (or a 'carer's assessment in the case of carers). The legal threshold compelling the authority to carry out an assessment is very low - it must 'appear' that the adult 'may' have needs for care and support. As long as this criteria is met the local authority must carry out an assessment, irrespective of the level or need, the person's financial circumstances or their immigration status.

There is no statutory time limit on how long a Local Authority can take to respond to a request for a needs assessment, however, the guidance states that it must be 'reasonable'.

The Care Act gives local authorities flexibility about how they carry out an assessment - it can be face to face or over the phone, it can be done by social workers, occupational therapists or other professionals. It will normally take place in the adult's home, or wherever they are currently staying.

Where there are questions about an adult's capacity to fully understand and participate in the process, an independent advocate should be appointed.



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The person carrying out the assessment should go through all of the specified outcomes and discuss the adult's needs - what they are able to do, what they require help with, and any other issues eg lack of suitable accommodation/financial support. The person being assessed (and anyone else involved eg a carer) should be given the opportunity to participate and have their voice heard.

Once the needs assessment has been completed, the Local Authority should be able to determine whether the adult has 'eligible needs' and if there is a duty to meet these needs.

The Care Act requires that the Local Authority provide a copy of the needs assessment (and Support plan) to the adult it concerns, as well as their carer and anyone else the adult wishes to be given a copy.

A Willing Carer

A local authority will not have a duty to meet needs that are already being met (and can continue to be met) by a willing carer.

The Destitution-Plus Test

Where an adult has NRPF, the Local Authority will not have to meet their needs for care and support if these needs arise solely from destitution or its effects - this is known as the 'destitution-plus' test.

The Human Rights Test

Some individuals with NRPF are excluded from accessing support under the Care Act 2014 by Schedule 3 of the Nationality, Immigration and Asylum Act 2002. This would include people who are undocumented and asylum seekers who have exhausted their appeal rights. The exception to this is where a failure of the Local Authority to provide support would breach an individual's Human Rights, and this breach could not be remedied by a return to their country of origin.



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What decisions might a Local Authority make and how can they be challenged?

1) Refusal to carry out an assessment

After you send your referral requesting an assessment, you may receive a response from the Local Authority stating that they will not carry out the assessment.

The way you challenge this will depend on the reason the Local Authority has given, for instance:-

i) Immigration status/NRPF - write back to the Local Authority to remind them that social care is not a public fund and that Section 9 of the Care Act 2014 states that “Where it appears to a local authority that an adult may have needs for care and support, the authority must assess—

- (a) whether the adult does have needs for care and support, and
- (b) if the adult does, what those needs are.

(2) An assessment under subsection (1) is referred to in this Part as a “needs assessment”.

(3) The duty to carry out a needs assessment applies regardless of the authority’s view of—

- (a) the level of the adult’s needs for care and support, or
- (b) the level of the adult’s financial resources.”

Explain to the Local Authority that this duty is irrespective of the client’s immigration status and that if they do not reverse their decision and confirm that they will carry out an assessment by dd/mm/yy, you will advise your client to seek legal advice. If your client is homeless and destitute, you should also request that they provide accommodation and support under Section 19 of the Care Act pending an assessment.

ii) The client does not have eligible needs - write back to the Local Authority to remind them that Section 9 of the Care Act 2014 states that “Where it appears to a local authority that an adult may have needs for care and support, the authority must assess—

- (a) whether the adult does have needs for care and support, and
- (b) if the adult does, what those needs are.

(2) An assessment under subsection (1) is referred to in this Part as a “needs assessment”.

(3) The duty to carry out a needs assessment applies regardless of the authority’s view of—

- (a) the level of the adult’s needs for care and support, or
- (b) the level of the adult’s financial resources.”

Explain that it is not possible to determine whether the client has eligible needs without first carrying out a needs assessment and that if they do not reverse their decision and confirm that they will carry out an assessment by dd/mm/yy, you will advise your client to seek legal advice. If your client is homeless and destitute, you should also request that they provide accommodation and support under Section 19 of the Care Act pending an assessment.



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iii) The client is not destitute - write back to the Local Authority to remind them that Section 9 of the Care Act 2014 states that “Where it appears to a local authority that an adult may have needs for care and support, the authority must assess—

- (a) whether the adult does have needs for care and support, and
- (b) if the adult does, what those needs are.

(2) An assessment under subsection (1) is referred to in this Part as a “needs assessment”.

(3) The duty to carry out a needs assessment applies regardless of the authority’s view of—

- (a) the level of the adult’s needs for care and support, or
- (b) the level of the adult’s financial resources.”

Explain that an assessment must be carried out irrespective of their view of the client’s financial resources and that if they do not reverse their decision and confirm that they will carry out an assessment by dd/mm/yy, you will advise your client to seek legal advice. If your client is homeless and destitute, you should also request that they provide accommodation and support under Section 19 of the Care Act pending an assessment.

iv) The client is destitute, and this is the only reason they are requesting support - write back to the Local Authority to remind them that Section 9 of the Care Act 2014 states that “Where it appears to a local authority that an adult may have needs for care and support, the authority must assess—

- (a) whether the adult does have needs for care and support, and
- (b) if the adult does, what those needs are.

(2) An assessment under subsection (1) is referred to in this Part as a “needs assessment”.

(3) The duty to carry out a needs assessment applies regardless of the authority’s view of—

- (a) the level of the adult’s needs for care and support, or
- (b) the level of the adult’s financial resources.”

Explain that an assessment must be carried out irrespective of their view of the client’s financial resources and that if they do not reverse their decision and confirm that they will carry out an assessment by dd/mm/yy, you will advise your client to seek legal advice. If your client is homeless and destitute, you should also request that they provide accommodation and support under Section 19 of the Care Act pending an assessment.

v) The client is ordinarily resident in another area - if you believe the referral was sent to the correct Local Authority, write back to remind them that there is a specific procedure set out in The Care and Support (Disputes Between Local Authorities) Regulations 2014 and that Regulation 2 states that “The authorities must not allow the existence of the dispute to prevent, delay, interrupt or otherwise adversely affect the meeting of the needs of the adult or carer to whom the dispute relates.” Further, paragraph 19.11 of the Care and Support Statutory Guidance states that “The determination of ordinary residence must not delay the process of meeting needs. In cases where ordinary residence is not certain, the local authority should meet the individual’s needs first, and then resolve the question of ordinary residence subsequently. This is particularly the case where there may be a dispute between 2 or more local authorities.” Therefore, if they continue to cause a delay in meeting the client’s needs by refusing to carry out the assessment, you will advise the client to seek legal advice. If your client is homeless and destitute, you should also request that



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they provide accommodation and support under Section 19 of the Care Act pending an assessment.

If no reason is given, you should write back to request a reason (giving a short deadline by which to respond). If your client is homeless and destitute, you should also request that they provide accommodation and support pending an assessment. If there is no substantive response by your deadline you should refer the client to a community care solicitor for advice on judicial review.

2) The client does not have eligible needs

You (and your client) should have been provided with a copy of the needs assessment. If you don't have access to the assessment you should respond to the decision immediately by requesting a copy and quoting Section 12 of the Care Act "*The local authority must give a written record of a needs assessment to—*

(a) the adult to whom the assessment relates,

(b) any carer that the adult has, if the adult asks the authority to do so, and

(c) any other person to whom the adult asks the authority to give a copy."

Go through the assessment with your client and consider the following:-

- Is it an accurate record of the conversation that took place between your client and the social worker?
- Is there anything in it that contradicts what you client has told you about their conditions/needs?
- Is there anything missing?
- Does it cover all of the points raised in your referral?
- Does it address all of the evidence provided?

If you and your client feel that the assessment does not accurately capture their needs, and/or there are contradictions/inaccuracies/omissions or the Local Authority has not engaged with the arguments you have made etc you should write back to the Local Authority to request a review. In your letter you should set out each point of disagreement, explaining why you disagree and citing any evidence you have provided that supports your view/hasn't been considered or addressed.

If you have not already provided medical evidence you should do this, and if possible try to obtain letters from medical professionals specifically discussing your client's care needs (although see 'A Guide to Care Act Support' on the potential risks of doing this). If your client is homeless and destitute, you should also request that they provide accommodation and support under Section 19 of the Care Act pending the review.

If the Local Authority refuses to carry out a review, or if they carry out a review and do not change their decision, it will not always be possible to challenge this further. You should make your client aware of this and seek legal advice as to whether there are grounds for a Judicial Review.

3) The client's needs are the result of destitution

Section 21 of the Care Act prevents a Local Authority from meeting needs which arise solely from destitution or its effects. This means that destitution can play a part, but it cannot be the only reason your client has care needs. If you believe that there is another cause of your client's needs, you should write back to the Local Authority, requesting a review of their decision and explaining **all** the causes contributing to your client's needs and stating that as per case law (R v Wandsworth LBC ex p O [2000] and R (PB) v Haringey LBC [2006]) the destitution-plus test can be met where destitution is a factor, as long as it is not the **sole** factor. Again, if you have not already supplied medical evidence you should do this, and if possible try to obtain letters from medical professionals specifically discussing your client's care needs (although see 'A Guide to Care Act Support' on the potential risks of doing this). If your client is homeless and destitute, you should also request that they provide accommodation and support under Section 19 of the Care Act pending the review.

If the Local Authority refuses to carry out a review, or if they carry out a review and do not change their decision, it will not always be possible to challenge this further. You should make your client aware of this and seek legal advice as to whether there are grounds for a Judicial Review.

4) The client is excluded by Schedule 3 and their Human Rights will not be breached if we don't provide support

You (and your client) should have been provided with a copy of the Human Rights assessment. If this is not available to you, you should respond immediately to request it.

Go through the assessment with your client and consider the following:-

- Is it an accurate record of the conversation that took place between your client and the social worker?
- Is there anything in it that contradicts what you client has told you about their circumstances?
- Is there anything missing?
- Does it cover all of the points raised in your referral?
- Does it address all of the evidence provided?
- Has the Local Authority made any enquiries of its own?
- What reasons/evidence do they give to support their decision?

If you and your client feel that the assessment does not accurately reflect the reality of their situation, and/or there are contradictions/inaccuracies/omissions or the Local Authority has not engaged with the arguments you have made etc you should write back to the Local Authority to request a review. In your letter you should set out each point of disagreement, explaining why you disagree and citing any evidence you have provided that supports your view/hasn't been considered or addressed.

If you have not already provided evidence about the client's homelessness/unsuitable living situation/destitution you should do this.

If your client is homeless and destitute, you should also request that they provide accommodation and support under Section 19 of the Care Act pending the review.

If the Local Authority refuses to carry out a review, or if they carry out a review and do not change their decision, it will not always be possible to challenge this further. You should make your client aware of this and seek legal advice as to whether there are grounds for a Judicial Review.

5) The client could return to their county of origin to avoid a breach of their Human Rights

You (and your client) should have been provided with a copy of the Human Rights assessment. If this is not available to you, you should respond immediately to request it.

Go through the assessment with your client and consider the following:-

- Is it an accurate record of the conversation that took place between your client and the social worker?
- Is there anything in it that contradicts what you client has told you about their circumstances?
- Is there anything missing?
- Does it cover all of the barriers to return raised in your referral?
- Does it address all of the evidence provided?
- Has the Local Authority made any enquiries of its own?
- What reasons/evidence do they give to support their decision?

If you and your client feel that the assessment does not accurately reflect the reality of their situation, and/or there are contradictions/inaccuracies/omissions or the Local Authority has not engaged with the arguments you have made etc you should write back to the Local Authority to request a review. In your letter you should set out each point of disagreement, explaining why you disagree and citing any evidence you have provided that supports your view/hasn't been considered or addressed.

If you have not already provided evidence about barriers to the client's return you should do this, for instance copies of applications for leave to remain/letters of advice from an immigration solicitor/medical evidence of being unfit to travel.

If there are no physical barriers and your client has not made an application for leave to remain you should try to arrange immigration advice (at least an initial appointment) as soon as possible to get an idea of whether an application is possible. If the advice is positive, you may then be able to argue that there is a legal barrier to return. If your client is homeless and destitute, you should also request that they provide accommodation and support under Section 19 of the Care Act pending the review.

If the Local Authority refuses to carry out a review, or if they carry out a review and do not change their decision, it will not always be possible to challenge this further. You should make your client aware of this and seek legal advice as to whether there are grounds for a Judicial Review.



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6) The Local Authority will provide care but not accommodation

You (and your client) should have been provided with a copy of the needs assessment. If you don't have access to the assessment you should respond to the decision immediately by requesting a copy and quoting Section 12 of the Care Act "The local authority must give a written record of a needs assessment to—

- (a) the adult to whom the assessment relates,
- (b) any carer that the adult has, if the adult asks the authority to do so, and
- (c) any other person to whom the adult asks the authority to give a copy."

Go through the assessment with your client, bearing in mind that the Local Authority is only required to provide accommodation if this is necessary in order to meet the client's care needs, and try to determine why accommodation has been refused.

- Is it an accurate record of the conversation that took place between your client and the social worker?
- Is there anything in it that contradicts what your client has told you about their circumstances?
- Is there anything missing?
- Does it cover all of the accommodation related issues raised in your referral?
- Does it address all of the evidence provided?
- Has the Local Authority made any enquiries of its own?
- What reasons/evidence do they give to support their decision?

Does the Local Authority concede that the client has 'accommodation-related needs' such as requiring help with washing, dressing, preparing food, keeping their environment clean and safe? If not, do you and the client believe that they have such needs? Have you provided evidence of this? Has the Local Authority engaged with this evidence? Is there any additional evidence you can obtain?

Does the Local Authority concede that the client has 'accommodation-related needs' but disputes that the client is homeless or in living in unsuitable accommodation? Have you fully explained the impact of the client's living conditions on their welfare and well-being? Have they considered all the evidence you have provided? Have they made additional enquiries? Is there any further evidence you can supply?

If you and your client feel that the assessment does not accurately reflect the reality of their situation, and/or there are contradictions/inaccuracies/omissions or the Local Authority has not engaged with the arguments you have made etc you should write back to the Local Authority to request a review. In your letter you should set out each point of disagreement, explaining why you disagree and citing any evidence you have provided that supports your view/hasn't been considered or addressed. You should also request that they provide accommodation and support under Section 19 of the Care Act pending the review. If the Local Authority refuses to carry out a review, or if they carry out a review and do not change their decision, it will not always be possible



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to challenge this further. You should make your client aware of this and seek legal advice as to whether there are grounds for a Judicial Review.

7) The Local Authority will provide care but not subsistence

You (and your client) should have been provided with a copy of the needs assessment. If you don't have access to the assessment you should respond to the decision immediately by requesting a copy and quoting Section 12 of the Care Act "The local authority must give a written record of a needs assessment to—

- (a) the adult to whom the assessment relates,
- (b) any carer that the adult has, if the adult asks the authority to do so, and
- (c) any other person to whom the adult asks the authority to give a copy."

Go through the assessment with your client and, bearing in mind that the Local Authority is only required to provide subsistence if the client has no other source of income. If your client is already receiving S95/4 support, support under S17 of the Children Act, or financial support from friends/family/community members the Local Authority will not normally have a duty to make additional payments unless it can be shown that these are required to meet specific care needs.

- Is it an accurate record of the conversation that took place between your client and the social worker?
- Is there anything in it that contradicts what your client has told you about their circumstances?
- Is there anything missing?
- Does it cover all of the issues relating to subsistence raised in your referral?
- Does it address all of the evidence provided?
- Has the Local Authority made any enquiries of its own?
- What reasons/evidence do they give to support their decision?

If you and your client feel that the assessment does not accurately reflect the reality of their situation, and/or there are contradictions/inaccuracies/omissions or the Local Authority has not engaged with the arguments you have made etc you should write back to the Local Authority to request a review. In your letter you should set out each point of disagreement, explaining why you disagree and citing any evidence you have provided that supports your view/hasn't been considered or addressed.

If you have not already provided evidence about the client's destitution should do this, for instance letters from people who have previously supported the client explaining why they can't continue/bank statements. You should also request that they provide accommodation and support under Section 19 of the Care Act pending the review.

If the Local Authority refuses to carry out a review, or if they carry out a review and do not change their decision, it will not always be possible to challenge this further. You should make your client aware of this and seek legal advice as to whether there are grounds for a Judicial Review.

8) The Local Authority will provide some care, but not as much as requested

You (and your client) should have been provided with a copy of the needs assessment. If this is not available to you, you should respond immediately to request it.

Go through the assessment with your client and consider the following:-

- Is it an accurate record of the conversation that took place between your client and the social worker?
- Is there anything in it that contradicts what you client has told you about their circumstances?
- Is there anything missing?
- Does it cover all of the points raised in your referral?
- Does it address all of the evidence provided?
- Has the Local Authority made any enquiries of its own?
- What reasons/evidence do they give to support their decision?

If you and your client feel that the assessment does not accurately capture their needs, and/or there are contradictions/inaccuracies/omissions or the Local Authority has not engaged with the arguments you have made etc you may want to write back to the Local Authority to request a review immediately. However, depending on degree to which the proposed care package differs from what was requested/expected it may be advisable to accept what is on offer and collect evidence of why it is insufficient over the following days/weeks and then ask for a review. During this period it is helpful if the client can make notes on what care is provided, how long each task takes, whether the carer has enough time to complete each task, if needs are not being met, what are the consequences and what is the impact on the client's wellbeing. It may also be possible to gather evidence from carers stating how much they are able to accomplish during their allotted time. You will then be in a stronger position when writing to the Local Authority to request a review. Depending on the deficit in care and the impact it is having on the client you can also request that they meet urgent needs under Section 19 of the Care Act pending the review.

If the Local Authority refuses to carry out a review, or if they carry out a review and do not change their decision, it will not always be possible to challenge this further. You should make your client aware of this and seek legal advice as to whether there are grounds for a Judicial Review.

What to do next?

If the client does not already have an immigration adviser it is very important to find one as soon as possible. You can read about the Care Act in more detail and get information and advice from The Care Rights Project. You can also get further information about the rights and entitlements of people with NRPF. If you need to refer your client for legal advice, you can find a community care solicitor here.