

Freedom of Information Request – Response – 27772

In response to the Freedom of Information request number 27616, you stated that 'learning from the judgment was incorporated into relevant Adult Social Care practice guidance and supporting materials where appropriate'. The Court judgement included the observation that the Act obliges councils to:

- '(i) Carry out a needs assessment (section 9);*
- (ii) Assess whether the needs for care and support found are "eligible needs" under the 2015 Regulations (section 13);*
- (iii) Meet the needs identified as eligible needs unless such needs are being met by a carer (section 18(1) and (7));*
- (iv) Consider whether to exercise its discretion to meet needs identified in the assessment which are not "eligible needs" (section 19(1));*
- (v) Draw up a care and support plan (section 24-25)'*

And that:

'... the Council's erroneous interpretation of its powers under the CA 2014 tainted the Eligibility Assessments by leading to a misguided exclusion of aspects of the Claimants' needs. The Council then failed to consider whether financial support should be offered to meet those needs. Therefore the Council cannot rely upon the Eligibility Assessments to avoid liability'.

Can you please provide me with the following information:

1. Was incorporation into practice guidance and supporting material the legal requirement to address the exercise of discretion under section 19(1) considered appropriate?

The Council considered it appropriate to address learning arising from the judgment through updates to relevant Adult Social Care practice guidance and supporting materials, alongside staff webinars, practice development sessions and training.

2. If so, what was the content?

There is no comprehensive or exhaustive list outlining all amendments made following learning from the judgment.

In addition to the previously referenced practice development and training content, which reinforced that care and support decisions must be based on assessed needs, eligibility, outcomes, wellbeing and individual circumstances under the Care Act 2014; that direct payments should be used flexibly to meet agreed outcomes; and that practitioners should apply the relevant Care Act duties and powers when considering how assessed needs are to be met, examples of content relevant to section 19(1) include:

- The Adult Social Care Direct Payments Policy states that a direct payment must be sufficient to meet the needs that the local authority has a duty to meet or has agreed to use its powers to meet.

- The Ethical Decision-Making Framework states that it is relevant to decisions about meeting eligible care and support needs under sections 18 and 19 of the Care Act 2014.

- Learning materials arising from the judgment included the following implications for practice:

- Not 'fettering discretion' – this means that we need to ensure that we don't have blanket rules saying what things we will or won't provide to meet needs
- Meeting needs – we are not limited to traditional services like building based respite, residential care or domiciliary care when meeting needs
- Powers under the Care Act – s.19 of the Care Act gives local authorities powers to meet needs that they don't have a duty to meet under s.18; where we think it might be beneficial to do so we need to demonstrate that we have considered using these discretionary powers
- Person centred care planning – when we care plan with a customer, we must look at their situation on an individual basis, considering what is important to them and what might enable them to meet their outcomes