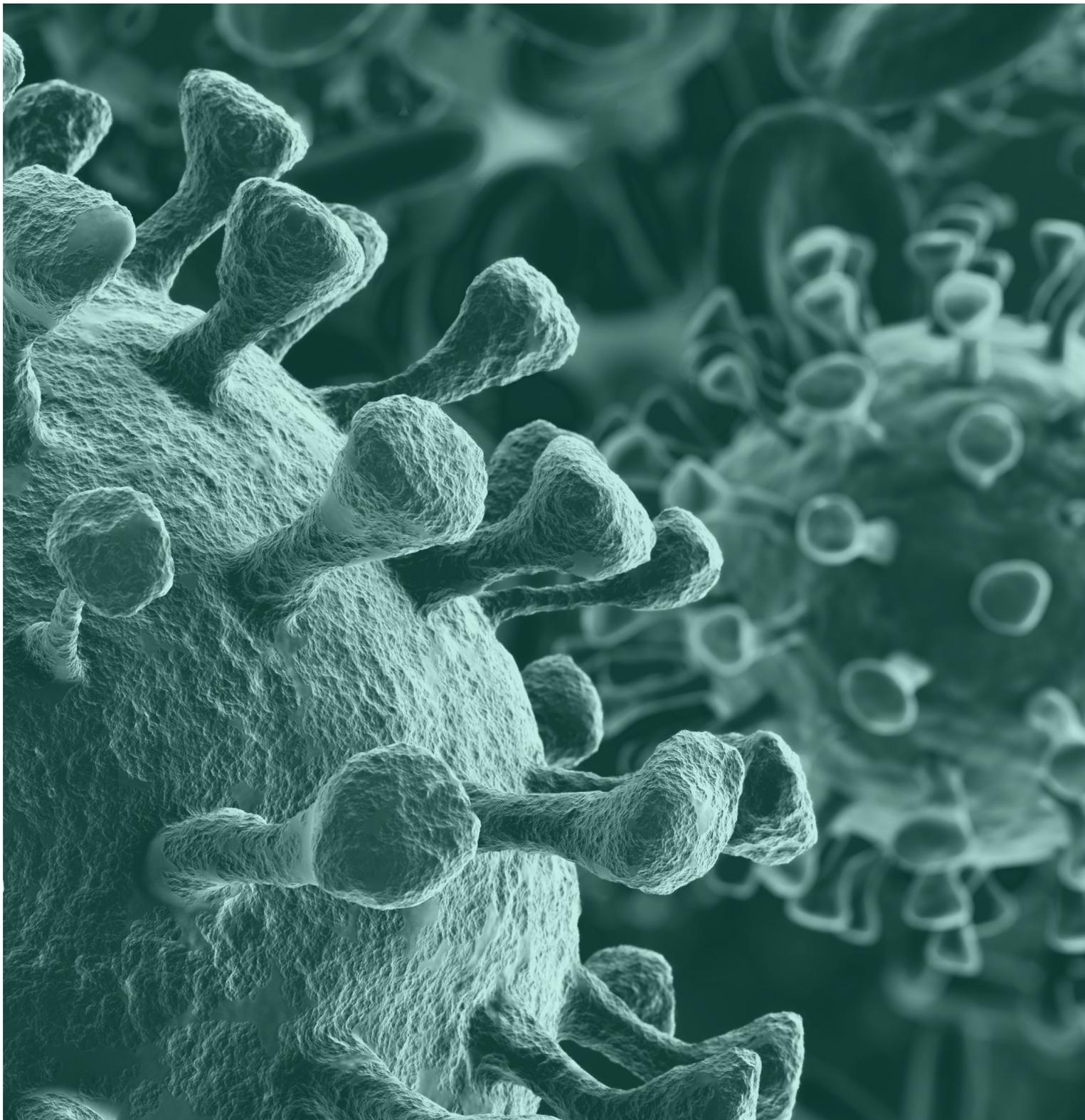


# Coronavirus (*COVID-19*) and changes to the Care Act 2014: A briefing for homelessness providers and practitioners

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# Introduction

This briefing highlights the changes to Care Act 2014 following the new emergency laws brought by the Coronavirus Act 2020. It is intended to support practitioners' thinking when working with people experiencing multiple disadvantages across voluntary and community sectors, housing associations, faith based community services and other providers that come into contact with excluded groups linked to homelessness. This document therefore acts as an aid to prepare groups of workers to exercise their professional judgement in ways which incorporates relevant laws, ethics and rights based-thinking.

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# What is the Coronavirus Act 2020?

The **Coronavirus Act 2020** was passed through Parliament at a fairly rapid pace coming in to force on 31<sup>st</sup> March 2020. This created temporary emergency laws which allow local authorities to suspend many of the Care Act 2014 duties (Section 15 and Schedule 12, Coronavirus Act 2020). This means that enforceable duties in the Care Act, including duty to assess and the duty to meet unmet eligible needs, are suspended during the emergency period if, locally, resources are stretched to such an extent that it is necessary to ensure safe care to as many people as possible. In other words, some duties in the Care Act may become powers. This means authorities will have discretion as to how best to assess and meet social care needs under the Care Act. It will, however, always be necessary to assess and provide care and support if, without this, there would likely be a breach of the person's human rights.

At a time when so much is changing so fast, practitioners could easily feel overwhelmed by the thought of how legislative changes may impact on their work. What is clear from the guidance issued by the Department for Health and Social Care is that decisions made in respect of individuals must continue to be person centred. Practitioners should be aware that delay, in withholding or withdrawing support, may amount to a breach of human rights. As a useful starting point, practitioners might find guides designed to support those assessing people with 'no recourse to public funds' (NRPF), such as guidance provided by the NRFP Network helpful. This is available at: [www.nrpfnetwork.org.uk/guidance/Pages/default.aspx](http://www.nrpfnetwork.org.uk/guidance/Pages/default.aspx)

## How does this change the duties under the Care Act 2014?

Since the passing of the Coronavirus Act the Department of Health and Social Care (DHSC) has released guidance for local authorities on how they can use provisions under the new emergency laws called *Care Act easements*. The guidance makes reference to when a local authority should consider, or decide, to apply the temporary easements, which should be as a result of a crisis to ensure that local authorities are able to prioritise the "most urgent and acute needs". In other words, even if someone is owed a legal duty under normal circumstances, local authorities now have discretion if the person's needs are not pressing enough in the event of an off-the-scale resource crisis. But that will be assessed by considering if not providing support would breach the person's human rights.

The changes fall into **four key categories**, each applicable for the period the powers are in force:

- Local Authorities will not have to carry out detailed assessments of people's care and support needs in compliance with pre-amendment Care Act requirements. They must, however, still ensure they have sufficient information to assess whether there is any urgent need (including for accommodation based support) and if it would breach the person's human rights if care and support wasn't provided.
- Local Authorities will not have to carry out financial assessments in compliance with pre-amendment Care Act requirements. They will have to notify people that they may have to carry out a financial assessment later and, possibly apply a retrospective charge for social care services.
- Local Authorities will not have to prepare or review care and support plans in line with the pre-amendment Care Act provisions. But any revision of an existing care plan still must comply with the Care Act duty, including a duty to consult with the person.
- The duties on Local Authorities to meet eligible care and support needs, or the support needs of a carer are replaced with a power to meet needs.

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As such, the guidance permits a temporary easement of certain responsibilities linked to assessments, care planning, reviews, and financial assessments as to manage additional pressures arising from any potential workforce issues and increased requests for urgent support. These powers are temporary and can only be exercised if absolutely needed. Point 6 of the Care Act easements guidance says:

*“A Local Authority should only take a decision to begin exercising the Care Act easements when the **workforce is significantly depleted, or demand on social care increased, to an extent that it is no longer reasonably practicable for it to comply with its Care Act duties (as they stand prior to amendment by the Coronavirus Act) and where to continue to try to do so is likely to result in urgent or acute needs not being met, potentially risking life.** Any change resulting from such a decision should be proportionate to the circumstances in a particular Local Authority”*

Although the easements took legal effect on the 31st March 2020, the DHSC reminded Local Authorities that they should continue to *“comply with the pre-amendment Care Act provisions and related Care and Support Statutory Guidance for as long and as far as possible”*. Once the temporary easement period ends or has been subjected to a review by the Secretary of State, all assessments and reviews that were either delayed or not completed during the emergency period will need to be followed up and finalised.

## **Will my local authority use the Care Act easements and how will I know?**

Each local authority will decide whether to operate the Care Act easements within its own area. The care act easement guidance provided by the Department and Health and Social Care has not been prescriptive. It says that easements and prioritisation: *“aims to help delivery of care and support in a risk informed way, ensuring everyone, where possible, gets the care and support they require, but that those most in need are prioritised first”*. Essentially, it is up to each area to decide according to local needs, complexity, risk and level of care and support required.

Should easements be introduced, key to the prioritisation process will be in the application of both legal principle and the adult social care ethical framework provided by the DHSC in response to COVID-19. Included amongst the values highlighted in the framework are the principles of respect, reasonableness and proportionality. It is easy to see how these link directly to continuing obligations under the Equality Act 2010 and Human Rights act 1998 as well as obligations to adhere to crucial procedural safeguards including the duties to co-operate with relevant agencies, consult with the person and their support network and provide advocacy support. The principles of inclusiveness and community underline the importance of cross sector and multi-agency working, reinforcing the valuable contribution that voluntary and charity sector workers can bring to support public sector workers during these testing times. The framework also highlights accountability and flexibility to ensure transparency of decision-making (including how decisions can be challenged) and the need to facilitate agile ways of working amongst the workforce.

As adult social care arrangements vary across areas and regions, the DHSC has laid out some controls on how and what a local authority should be doing when deciding to operationalise the temporary easements. For example, there will be a greater role for Principal Social Workers (PSW) in the decision-making process. It is anticipated that PSWs will recommend and agree with Directors of Adult Social Services and involve their lead member when deciding to operationalise the Care Act easements. This will also involve keeping local Health and Wellbeing Boards informed alongside local NHS Clinical Commissioning Groups (CCG's) including communicating their decision to providers, service users and carers and reporting to the DHSC.

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## What about Adult Safeguarding?

New emergency laws under the Coronavirus Act 2020 do not change the **safeguarding protections** found under section 42 of the Care Act 2014. This means that local authorities must continue to provide the same degree of oversight in the application of a section 42 safeguarding enquiry and social care providers, the health and voluntary sector must continue to work to prevent and reduce the risk of harm to people with care and support needs, including those affected by COVID-19.

## What about the Mental Capacity Act?

The emergency legislation introduced to respond to the outbreak has not altered how the Mental Capacity Act 2005 operates in England, but precautions designed to keep us all safer will mean professionals may have to interpret how this impacts on their usual practice. Guidance is emerging to support the workforce, but now more than ever local authorities and providers should work with the wider workforce (including within the voluntary and charity sector) to develop personal centred plans to guide non-experienced staff in carrying out mental capacity assessments.

## What will these changes mean for people experiencing multiple disadvantages?

People experiencing multiple disadvantages (**especially those experiencing the most extreme forms of social exclusion, such as rough sleeping**) have often struggled to access adult social care and to have these needs for care and support recognised. It will therefore be important to monitor closely what is happening to them in areas where easements are introduced so as to prevent further marginalisation. Indeed, the Care Act 2014 was not well-funded before the pandemic meaning that some local authorities were already struggling to meet needs that might be described as urgent and acute. What scope there is for further prioritisation without triggering safeguarding concerns under 'neglect' (acts of omission and failure to provide appropriate care and support) remains to be seen.

It will also be important for practitioners to recognise the potential of COVID-19 to significantly increase levels of risk. For example, many people may need to reduce their substance use intake and are at risk of withdrawal symptoms. People may already have weakened immune systems as a result of prolonged periods of rough sleeping including higher prevalence rates of infectious diseases than the general population. Such conditions and diseases can include: respiratory illnesses, skin and foot infections, musculoskeletal disorders and chronic pain, heart disease, hepatitis C and tuberculosis. During the outbreak, the availability of support from health professionals and addictions services will be less and most face-to-face support has been withdrawn, although many providers will have moved to phone or online support, access to basic communication tools, such as a mobile phone or the internet may not be readily available.

***Many people who sleep rough have been moved by local authorities off the street and into hotel accommodation. However, this is likely to be a very isolating experience without having good support in place. More than ever imaginative person-centred care and collaborative multi-agency risk management planning, rather than a single agency responding to an immediate crisis will be required, but this is at a time where the workforce will be significantly challenged.***

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# What can practitioners do to ensure their clients access the care and support they need?

*Practitioners can:*

- If not already notified, seek to understand if the Care Act easements are operational within your local authority and the sorts of things that are being noted as “urgent and acute” and whether the person you’re helping falls within this category. Please note, there may not be an actual ‘tick list’ that describes what urgent and acute looks like, so professional antennae and fact finding will be need to be triaged, recorded and shared.
- Complete the **VOICES Care Act Toolkit** as a way of laying out information for consideration by social services – Be clear about why you think the needs are “acute and urgent”?
- Practitioners can think about how a person’s needs impacts on their wellbeing and human rights, remembering that decision-making should be on a case-by-case basis, person-centred and proportionate to the individual circumstances.
- Continue to work with local authority safeguarding teams where there is a risk of abuse or neglect. Be alert to emerging new risks associated with social isolation. This includes a rise in people experiencing acute mental health crisis (including risk of suicide), domestic abuse and financial exploitation. Most local authorities have dedicated COVID-19 webpages detailing how people can access emergency support or refer safeguarding concerns.
- Seek support from management to escalate concerns if required.

## Useful Links

**Coronavirus act 2020:** <http://www.legislation.gov.uk/ukpga/2020/7/contents/enacted>

**VOICES Care Act Toolkit:** <https://www.voicesofstoke.org.uk/wp-content/uploads/2018/02/CareActToolKit.pdf>

**NRPF Guidance:** <http://www.nrpfnetwork.org.uk/guidance/Pages/default.aspx>

**Care Act easement information:** <https://www.gov.uk/government/publications/coronavirus-covid-19-changes-to-the-care-act-2014/care-act-easements-guidance-for-local-authorities>

**Social Care ethical framework:** <https://www.gov.uk/government/publications/covid-19-ethical-framework-for-adult-social-care/responding-to-covid-19-the-ethical-framework-for-adult-social-care>

**Safeguarding protections:** <https://www.gov.uk/government/publications/coronavirus-covid-19-changes-to-the-care-act-2014/care-act-easements-guidance-for-local-authorities#annex-d-safeguarding-guidance>

**Mental Capacity Act guidance:** <https://www.mentalcapacitylawandpolicy.org.uk/resources-2/covid-19-and-the-mca-2005/>

**Coronavirus (COVID-19). Clinical homeless sector plan: triage – assess – cohort – care:**

<https://www.pathway.org.uk/wp-content/uploads/COVID-19-Clinical-homeless-sector-plan-160420-1.pdf>

**COVID-19 and the MCA 2005 by Alex Ruck Keene:** <https://www.mentalcapacitylawandpolicy.org.uk/resources-2/covid-19-and-the-mca-2005/>

**Mental Capacity – the key points – webinar by Alex Ruck Keene:**

<https://www.mentalcapacitylawandpolicy.org.uk/capacity-the-key-points-webinar/>

**Capacity in the time of Coronavirus:** <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7151525/>

## About the authors

**Bruno Ornelas** is the Head of Service and Safeguarding at **VOICES** and **Brighter Futures Housing Association**. He completed a masters in Safeguarding Adults Law, Policy and Practice at Keele University and his interests centre on health, social care and safeguarding and its intersections with housing and homelessness.

**Fiona Bateman** is a founding trustee director at **CASCAIDr** and works as an Independent Chair to Safeguarding Adults Boards. Fiona is an experienced solicitor with expert knowledge of health and social care law and safeguarding responsibilities.

**Dr Michelle Cornes** is a Senior Research Fellow at the NIHR Health & Social Care Workforce Research Unit (**HSCWRU**) which is a research partnership between King's College London and the Institute for Fiscal Studies. Michelle is currently leading a major project funded by NIHR on **hospital discharge arrangement for people experiencing homelessness**.

## Further reading

**Ornelas, B** and **Bateman, F.** (2020). COVID-19: Ending the Interim Accommodation Duty and Mental Capacity. Stoke-on-Trent: VOICES.

**Ornelas, B., Schwehr, B., Davies, G.** (2020). Unwise choices or uniformed decisions regarding housing options? The duty to make enquiries and the implied duty to support decision making. Stoke-on-Trent: VOICES.

**Ornelas, B.** (2020). Learning Lessons from Safeguarding Adult Reviews. Homeless Link

**Ornelas, B., Schwehr, B., Davies, G.** (2019). A Persistent and Unequivocal Refusal? The Ending of Interim Accommodation. Stoke-on-Trent: VOIC

**Martineau, S. J., Cornes, M., Manthorpe, J., Ornelas, B., & Fuller, J.** (2019). Safeguarding, Homelessness and Rough Sleeping: An analysis of Safeguarding Adults Reviews. London: NIHR Policy Research Unit in Health and Social Care Workforce, The Policy Institute, King's College London.

**Cornes, M., Ornelas, B., Bennett, B., Meakin, A., Mason, K., Fuller, J., and Manthorpe, J.** (2018). Increasing Access to Care Act 2014 Assessments and Personal Budgets Among People with Multiple Needs Linked to Homelessness and Exclusion: A Theoretically Informed Case Study. Housing Care and Support.

**Ornelas, B** and **Cornes, M.** (2017). The Care Act: A Toolkit for Advocacy. Homeless Link.

**Mason, K., Cornes, M., Dobson, R., Meakin, A., Ornelas, B., and Whiteford, M.** (2017). Multiple Exclusion Homelessness and adult social care in England: Exploring the challenges through a researcher-practitioner partnership. Research, Policy and Planning (2017/18) 33(1), 3-14.



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