

## COMMUNITY CARE – RESETTLEMENT RIGHTS

---

### *What are Community Care services?*

Community care services are provided by local authority social services departments and include the following:

- residential accommodation (such as drug and alcohol services) to those who by reason of age, illness, disability or any other circumstances (including addiction) are in need of care and attention not otherwise available to them;
- provision of meals, practical assistance and adaptations in the home, educational facilities, and employment assistance.

Prisoners who might be eligible for community care services include those with disabilities, chronic illness, mental health problems and drug addictions. Local authorities (LAs) have the same community care powers and duties in relation to released prisoners as they do to any other individual.

### *Community Care Assessments*

Under s.47 of the National Health Service and Community Care Act 1990, LAs have a duty to assess and produce a care plan for prisoners who 'may be in need' of community care services (a Care Assessment). 'May be in need' includes people who are 'about to be in need'. The duty to assess therefore arises before a prisoner's release date. LAs are also required to assess prisoners who are coming up for parole, even though they do not have a definite release date.

The duty to assess is triggered as soon as the authority becomes aware that someone 'appears' to be in need of community care services. This is a very low threshold test.

### *Gateway to other services*

Care Assessments are important because they act as a gateway to assessments by other agencies, such as NHS Primary Care Trusts or

housing authorities, where a need for health services or housing is identified during the Care Assessment. This includes:

- health care services provided by GP's, community mental health and learning disability teams, and hospitals under the NHS Acts;
- free 'after care' services, including accommodation, to those who have been transferred to hospital under section 47 or 49 of the Mental Health Act, and then returned to prison before release (s. 117 MHA);
- local authority accommodation under homelessness legislation for individuals who are identified as being of 'priority need.'

### *Who can request a Care Assessment?*

Statutory guidance states that prisons should work with Probation, the relevant LA and NHS Primary Care Trust to support assessment and care planning for prisoners who will require community care services on their release from prison. It is good practice for prisons to initiate such joint care planning at least 3 months before a prisoner is released.

In practice, however, prisons and Probation very rarely refer prisoners to LAs for Care Assessments prior to release.

Anyone can refer someone for a Care Assessment, however, and prisoners can do it themselves by contacting their responsible LA. There is no particular procedure for requesting a Care Assessment.

### *Who is the responsible local authority?*

The LA responsible for conducting a Care Assessment is generally the one in which someone is 'ordinarily resident'. Due to the unusual position of prisoners, the following statutory guidance has been issued to help

identify their responsible LA:

- LAs should start from a presumption that a prisoner remains ordinarily resident in the area in which they were ordinarily resident before the start of their sentence.
- However, determining ordinary residence on release from prison will not always be straightforward and each case must be considered on an individual basis. It may not be possible for a prisoner to return to their prior local authority area due to the history of their case and any risks associated with a return to that area. Therefore, any presumption of ordinary residence may be rebutted by a number of factors, including the prisoner's wishes and intentions about where to live, the length of their sentence and remaining ties with their previous area.
- If a prisoner's place of ordinary residence is unclear and/or they express an intention to settle in a new local authority area, the local authority to which they plan to move should take responsibility for carrying out the community care assessment.

If LAs are unable to agree on which area should be responsible for conducting a Care Assessment, provisional responsibility must be assumed by the authority in which the prisoner is physically present ('the authority of the moment'), until the dispute is resolved. For prisoners this will be the LA for the area of the prison in which they are located. Disputes between LAs must not prevent, delay or otherwise adversely affect the provision of services.

#### ***Implications of 'ordinary residence'***

The responsible LA has a duty to conduct a Care Assessment for anyone who appears to be in need of community care services.

However, LAs only have a duty to *provide* care services to those who they accept have 'ordinary residence' in their local authority area. For individuals who do not have ordinary residence, the LA has a power, but not a duty to provide care services.

A LA into which a prisoner is resettled may, nevertheless, be under a duty to provide

accommodation where, for instance, the prisoner was homeless prior to custody and s/he is in 'urgent need' in the LA's area. Responsibility for securing permanent accommodation may, however, be passed by that authority to another with which the applicant has a local connection.

#### ***Challenging Care Assessment Decisions***

All statutory duties may be enforced in public law judicial review proceedings. Public funding is available for such proceedings, which can be very effective in obtaining emergency injunctive relief, compelling the authority to assess for services for example. Such proceedings are, however, complex and prisoners should seek the assistance of a specialist community care solicitor.

#### ***Prisoners who require care services in prison***

Arguably, the duty to assess also arises when a prisoner needs care support in prison, during the term of their sentence. The court has held that the equivalent assessment duty for children (under Children Act 1989, s17) does not cease to be owed simply because children are detained in custody. Rather the duty to assess arises where children (and the same would go for adults) appear to be in need of such services.

Prisons also have a duty to make reasonable adjustments and provide support services to disabled prisoners under the Disability Discrimination Act 1995, and to prevent breaches of Articles 3 (inhuman and degrading treatment) and 8 (right to private and family life) of the European Convention on Human Rights. These duties also arguably include the provision of care services.

If you are a disabled, or physically or mentally ill prisoner who may benefit from a Care Assessment either in prison or prior to release, please contact us for further information.

PRISONERS' ADVICE SERVICE PO BOX 46199 LONDON EC1M 4XA TEL: 020 7253 3323 / 0845 430 8923
--