

Care for Prisoners who are Ill or Disabled

If you have **physical or mental illness or impairment** then you may be entitled to receive health and care services both in prison and on release. Please see our information sheet on Resettlement for more information about care and accommodation services in the community

Different types of assistance:

- **Social care** – Care Act 2014 (CA);
- **Reasonable adjustments for those with disability** under s20 Equality Act 2010 (EA); and
- **Healthcare** under the NHS Acts.

You can enforce your rights through the **courts** and by making **complaints**. Please see our healthcare complaints info sheet.

SOCIAL CARE UNDER THE CARE ACT

Under the **CA and PSI 03/2016**, the Local Authority (LA) has a duty to prisoners based in prisons or Approved Premises (APs) in their area to coordinate with the prison, probation and healthcare to ensure community care assessments are conducted to assess people's needs.

Paragraph 1.8 of PSI 03/2016 provides that prisoners should "have equivalent access... as in the community, and are supported to live with dignity and as much independence as possible".

The prison or AP also has a duty under the CA to refer prisoners that they think may need a care assessment to the LA for assessment.

The LA and other partner public bodies (i.e. prison, healthcare, probation, police etc) have a duty to cooperate with one another regarding your care.

When are you eligible for social care and support?

A person will be eligible for LA social care if their illness or impairment means they are unable to achieve 2 or more outcomes below resulting in a significant impact on their

wellbeing set out in the **Care and Support (Eligibility Criteria) Regulations 2015** i.e.:

- Managing and maintaining nutrition.
- Maintaining personal hygiene.
- Help going to the toilet.
- Help clothing yourself.
- **Mobility** around the prison/your cell.
- Developing and maintaining family relationships.
- Help in performing work, training, education or volunteering. This may require an assessment by an Occupational Therapist (OT).
- Help on temporary release.

Para 12.3 of PSI 03/2016 states LAs may be required "to provide **at their cost equipment** (e.g. hoists) and personal **aids** (e.g. to assist mobility; this is up to the value of £1,000."

Note: prisoners can sometimes be permitted to **assist others with care** but **not intimate care** (para 3.5 PSI 17/2015).

Who is responsible for delivering social care?

The LA in the area where the prisoner is ordinarily resident i.e. the LA area where the prison or AP is located.

When will a Social Care Assessment be carried out?

If LA is made aware that a person **may** have care/support needs arising from their illness/impairment, they **must** carry out an assessment of the care needs of the person.

Who can make a referral for social care assessment?

Although the prison should make the referral, anyone can make a referral including you.

How do you make a referral?

Put in an application to the healthcare team in the prison to ask them to refer you to Social Services at the LA for a care assessment. You could also send a letter requesting this to the Adult Social Care Team at the nearest LA.

When should a referral be made?

A new referral and assessment should occur every time the prison/AP/LA know you are going to move i.e. on them being notified you are being transferred to another prison/AP or transferred to open prison or released. It should also be made whenever your illness/impairments or your needs change.

If the LA is notified of urgent needs they should provide urgent care without waiting for a full assessment to be completed.

DISABILITY AND THE EQUALITY ACT

What is a disability?

A disability is defined legally as an illness or physical or mental impairment that has a substantial and long-term adverse effect on your ability to do normal day-to-day activities.

Substantial = more than minor.

Long term = a condition that has lasted more than 12 months or is likely to persist for that time. (Please also refer to our information sheet on Disability Discrimination.)

What are examples of disabilities?

- Cancer, HIV, sensory impairment.
- Physical impairment to mobility
- Mental health: e.g bipolar, depression.

What is not a disability?

Minor illnesses/impairments (e.g. hayfever) or those that are serious but do not last 12 months

What are the rights of disabled people?

Under s20 EA if you have a disability, all public bodies (not just prison and LA) have a legal obligation to make any necessary reasonable adjustments i.e. to remove obstacles that place disabled people at a particular disadvantage when accessing services compared to non-disabled people.

If the reasonable adjustment required is an auxiliary aid, the disabled person should not be charged a fee for the auxiliary aid. Example: a hearing aid if you need that to hear orders from prison officers.

How can I get reasonable adjustments?

Reasonable adjustments are when you ask the prison to change things to assist you, e.g. putting in a ramp so a wheelchair user can

attend Education. If you have a disability and require reasonable adjustments you should put in an application to the Prison Disability Liaison Officer or Healthcare setting out your disability and what you need help with. If you are also making a referral for a care assessment, you can include this request in the referral too.

What if reasonable adjustments aren't made?

This can amount to discrimination under the EA. **Example:** not providing a zimmer frame to a person with severe mobility issues.

ENFORCING RIGHTS

What if my CA rights are not met?

The way to challenge acts that are unlawful is by way of **judicial review (JR)** issued promptly and in any event within 3 months of the failure/act complained of.

First complain in writing. Please see our Complaints and Healthcare complaints information sheets which explain how to make and escalate these complaints. A social care complaint about the LA should be forwarded to them by the prison (para 14 of the PSI 05 2016) and can be escalated to the Local Government Ombudsman (LGO).

What if my EA rights are not met?

If believe you have been subjected to discrimination, you can make a complaint (including one about CA above) ASAP on a **Discrimination Incident Reporting Form (DIRF)**. You can also ask questions of the prison and LA. This may show whether or not the prison/LA is being discriminatory.

If you're unhappy with the response, make a stage 2 complaint with a COMP 1A. You also might be able to bring a **civil action** for compensation under EA but there is a 6 month time limit from the date of the act complained of. We recommend seeking legal advice before bringing a case. Legal aid is available subject to means assessment.

PRISONERS' ADVICE SERVICE
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Advice Line: TEL: 020 7253 3323

Mon, Wed, Fri 10am-12.30pm & 2pm-4.30pm