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The Impact of Care Act Easements

under the Coronavirus Act 2020 on older carers supporting family members living with dementia at home

Executive Summary
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Context

In the extreme uncertainty and challenges faced during the first Covid wave in the United Kingdom, on 25 March 2020 Royal Assent was given to the Coronavirus Act 2020, giving emergency and enabling powers across a number of legal domains. Schedule 12 of the Act included an unprecedented power for local authorities in England temporarily to water down the majority of their adult social care duties under the Care Act 2014 (referred to in this report as the "Care Act"). The steps were known as "easements" and came in four stages. Stages 1 and 2 highlighted existing legal flexibility. Stage 3 permitted local authorities to cease Care Act assessments, applications of eligibility and reviews. Stage 4 permitted whole system prioritisation of need to avoid human rights violations. Triggering stages 3 and/or 4 protected local authorities in England from legal action for failure to comply with their statutory duties if they were unable to do so because of crisis circumstances.

Only eight out of 151 local authorities with adult social care responsibilities triggered stage 3 or stage 4 easements, and only at various times between April and June 2020. These were Birmingham, Coventry, Derbyshire, Middlesborough, Solihull, Staffordshire, Sunderland, and Warwickshire. Their easements were short lived, one lasting just over a week and the longest, three months. So far there has been little or no understanding of the consequences of Care Act easements for the people affected, or steps taken to address urgent needs arising from reductions in support as a result of the easements specifically or the pandemic conditions more generally. The research team set out to investigate these issues from two perspectives: one, from the vantage point of social work and safeguarding leads who were making difficult decisions in crisis circumstances; the other through the lens of family carers of people living with dementia at home. The focus of the in-depth qualitative study was on an especially hidden group of family carers: older people caring for a spouse living with dementia at home.

In particular, the project aimed to:

i. document the impacts of care easements and reinstatement of statutory duties for this carer group;
ii. compare these with experiences in local authorities where stage 3 or 4 easements were not triggered but services were cut;
iii. understand how policymakers with safeguarding responsibilities approached the issues;
iv. understand and document current urgent needs.

Methods

The project took place in four workstreams, as follows:

i. 48 in-depth interviews with people over 70 who had been supporting their spouse or partner living with dementia to live at home in England. Approximately one third of the interviewees were in easement local authorities and two thirds in non-easement local authorities.
ii. In-depth interviews with 27 Principal Social Workers/Safeguarding Leads (n=22) and/or others in leadership at 20 local authorities (n=5); five had invoked easements and fifteen had not.
iii. Drawing on the qualitative work, a survey of caregivers who were supporting a family member living with dementia at home from across the UK (n=604).
iv. Legal analysis of the operation of the Care Act easements in light of the empirical findings.

Summary of key findings

This research has revealed a complex picture of local authorities acting under extreme pressures with greatly stretched resources in crisis circumstances, and of carers struggling without access to many pre-existing support routes while those they cared for were rapidly deteriorating mentally, physically and socially. The impact on carer health and wellbeing has been profound.

The findings can be summarised as follows:

- Across both local authorities in this study that invoked easements and those that did not, evidence from carers and local authority social work leads revealed that carers and the family members they were supporting experienced significant changes from their usual care and support, which in many cases resulted in lower wellbeing and unmet need. The survey results suggest a population in acute distress and suffering from very poor mental health.

- Given the evidence of reductions in support to carers at a time when their needs were increasing, and the apparent extent of unmet need among carers in this study, on the face of it there appears to have been a high risk of instances where statutory duties under the Care Act towards carers were not met – including for assessment, provision, communication, and reviews. If this is the case for any individual in any given local authority, Care Act easements were likely to have been required at that time.
- Although the experiences were similar across the local authority areas in this study, easements were differentially implemented, soon revoked, and not in force for any local authority beyond July 2020. There appears to have been little consequence – whether political, legal, or regulatory – for those local authorities that did not invoke easements. However, for those that did, there was considerable pressure from lawyers, NGOs, lobby groups and adverse media attention.
- The pandemic conditions therefore appear to have set a precedent whereby diminished provision under the Care Act has been provided to caregivers and the people they support, below the levels previously thought to be the minimum acceptable, without litigation or regulatory intervention or consequence. This was due to stretched resources and the complex conditions that prevailed, but if it is correct that this could have been done lawfully without Care Act easements, there is a danger that Care Act statutory duties may have been permanently undermined.
- This is because local authority resources for social care, especially staffing levels, are reported as increasingly critical, and some suggest they are in a worse position now than in the first year of the pandemic. If the pandemic conditions justified unmet social care need without needing to ease Care Act duties, it is unclear what state those duties are in now. Not recognising the strength of statutory duty in pandemic conditions runs the risk of their de facto dilution to mere powers in the circumstances now prevailing in many areas. There are critical stresses in carer support and provision.
- Carers seem unprotected with few options. They are dealing with an unclear legal situation and widespread stress and burden.

Conclusions

Even though the option to seek easements expired in July 2021, understanding what happened during and beyond this unique period and what the consequences have been for local authorities remains crucially important for several reasons:

- the option to invoke Care Act easements has revealed ambiguities in legal thinking about what the statutory duties and Guidance mean in practice and, in crisis circumstances, what it takes to fulfil these duties, and when a breach might occur;
- there are stark differences between the treatment of rationing of healthcare, on the one hand, and social care, on the other, during the pandemic, which raises questions for future emergency scenarios;
- the research uncovers a picture of family carers behind closed doors, already struggling prior to the pandemic with insufficient support at home, stretched to or beyond breaking point;
- the emergency systems implemented to support both local authorities and carers were fraught with difficulties, suggesting that renewed thinking is needed for future Covid waves or pandemics;
- the difficulties during the pandemic were overlayed on a home care system already under extreme pressure, with multiple challenges in providing adequate support to this vital group of carers;
- many older carers have suffered greatly in the pandemic revealing a class of people given little priority and inadequate support.

Limitations

There are a number of important limitations to this study. This was not case study research, and any potential breach of Care Act statutory duties can only be determined on a case-by-case basis. While we present widespread and consistent evidence of what happened during the pandemic across the country, the data also reveals variation. The study interviewed individuals in positions of social work leadership from twenty local authorities, out of 151, and this research can therefore do no more than suggest that consistent findings from these local authorities suggest a national pattern of consistent mitigations for pandemic circumstances. Finally, the survey was not a random sample of carers, and it is feasible that those with worse mental health outcomes from the pandemic are disproportionately represented in the survey. Even if this is so, the survey confirms interview data revealing severe impacts of support deficits during the pandemic in the face of high levels of need.

Implications

The study has a number of implications. There is a policy need to consider how the rapidly increasing demographic group of older carers can be identified before any such future event, and how carers' needs and those of the people they support identified in this study could be appropriately met, even in pandemic circumstances. Consideration needs to be given to resource provision for local authorities, and how to provide real alternatives if services need to close. How to ensure safe home care during a pandemic that does not present unacceptable risk of disease and maintains sufficient quality of provision is an important question, as is the need to provide more acceptable forms of respite care that do not risk the separation and isolation from family carers that prevailed. Better practical, logistical and mental health support for carers seems urgently needed. Carers need to be at the centre of these discussions.

Care pathways after a dementia diagnosis are problematic with little integration between medical pathways and holistic care and support for carers. Attention also needs to be given to the diminishing workforce in social work through early retirement and resignations, and the difficulties currently faced in their replacement. How to protect and preserve the social care workforce during and after a pandemic seems a vital question.

Finally, and although it is acknowledged that the Coronavirus Act was enacted very quickly, proper consideration needs to be given to the purpose of provisions such as easements and for a dialogue to be opened with the health system, local authorities, lobby groups, charities, and carers to consider how to respond in the future. This includes, but is not limited to, providing effective legal frameworks, and improved practical and financial resources, in ways that better meet both carers needs and those of the family members they support behind closed doors.

The report and related documents are available at:
https://www.opfpru.nihr.ac.uk/our-research/projects/the-impact-of-care-act-easements