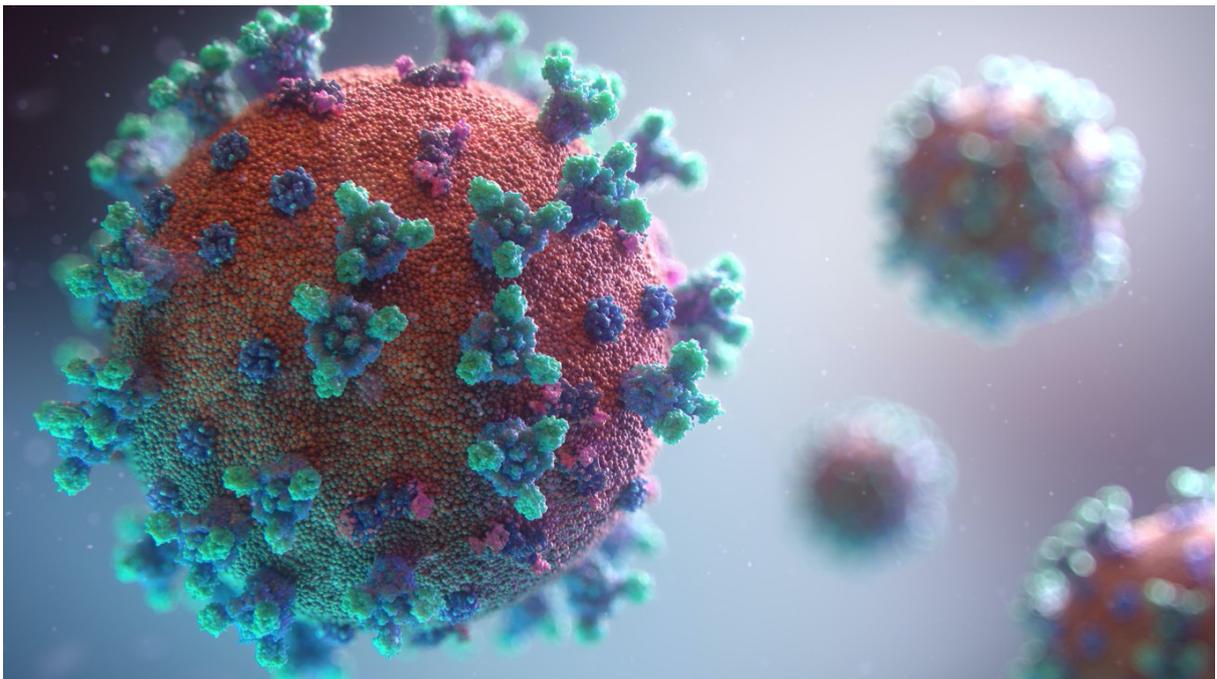


Adult Social Care Provision under Pressure: Lessons from the Pandemic



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An initial report by Jean V. McHale and Laura Noszlopy
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EXECUTIVE SUMMARY

The Covid-19 pandemic has had profound impacts across society as a whole. It was inevitable that there would be concerns about the effect of the pandemic, and the emergency statutory provisions enacted at its outset, on those who rely on adult social care. Some of those who draw on adult social care support may be older and living with dementia or other chronic illnesses, or they may have a physical or learning disability. These factors place them in a vulnerable position both in relation to the risk of infection and in terms of the social isolation and deprivations associated with lockdowns and shielding; they were severely and disproportionately impacted.

Taking the West Midlands as a case study, we examine the impact of the Coronavirus Act 2020 and other infection control mitigations on the provision of adult social care across the region. We examine West Midlands Local Authorities that took up the Government's offer to implement formally notifiable 'easements' that allowed them to depart from the existing statutory obligations in the Care Act 2014 when workforce capacity and resources were under extreme pressure, and what happened in those authorities where easements were not formally notified.

The report examines:

1. The relationship between the existing and emergency legislation around adult social care provision;
2. The impact of the pandemic and the emergency measures on adult social care provision in terms of decision-making, prioritisation, and practical support on the ground in the early months of the pandemic; the implementation of statutory 'easements' and their impact on social care; and what happened once the easements were formally withdrawn;
3. For comparison, what happened in local authorities where 'easements' were not formally notified;
4. What these experiences suggest about the effectiveness of national and Local Authority level preparedness and emergency planning in relation to adult social care;
5. How far pandemic practices have changed the nature of and expectations regarding the delivery of adult social care services;
6. The lessons that can be learned from the West Midlands' experience in relation to national debates around the reform of adult social care provision.

Key Findings and Lessons for Future Pandemic Planning

Key Findings

- 1. Professional organisations such as Association of Directors of Adult Social Services and Chief Social Workers were involved in pandemic planning at national level both following Exercise Cygnus and in the early days of the Covid-19 pandemic. However some interviews with stakeholders indicated that this early-stage awareness had not been pre-emptively integrated or effectively disseminated at regional and local levels. Some staff at local level were left struggling to manage the fast-changing situation and the “drip-feeding” of complex guidance from central Government, often via the media.**
- 2. Language matters. The term “easements” itself – which has a very specific legal meaning in Land Law – was not appropriate to use in Pandemic Planning or DHSC Guidance which concerns alteration or potential removal of social care services.**
- 3. Contrary to what had been assumed, there was not a simple division between those Local Authorities which had, and those which had not, activated and/or implemented easements. As this Report demonstrates, there were in fact three clearly discernible categories in practice.** First, there were those which operated under higher-level Care Act easements which were notified to the DHSC and listed on the CQC website. Secondly, there were those which expressly and confusingly declared that they were operating “Care Act easements,” including up to the end of 2020, but which appear to fall within Stage 2 of the Guidance. Thirdly, there were those which self-declared that they had not implemented easements and did not formally state that they are operating with Stage 2 “flexibilities”. There was also one West Midlands Local Authority where there appeared to be a contradiction in the minutes of different council meetings as to whether easements had or had not been operating. **In practice, however, in terms of implementation of changes to provision of services the overall impression is that most West Midlands Local Authorities were taking a similar approach, but some formally declared the changes while others did not.**
- 4. Some inconsistency in approaches to provision of information by West Midlands Local Authorities regarding the easements.** Some Local Authorities did not use the term “easements” when providing information regarding impact on services on their websites, while others did. A DHSC webinar on 8th April 2020 indicated that methods of dissemination were a matter for Local Authorities.
- 5. Inconsistency between some West Midlands Local Authorities as to whether measures such as the closure of day centres constituted a Stage 2 “flexibility,” a change that could be considered an “easement,” or a public health measure pertaining to the separate Government guidance on social distancing.**

6. **It was clear that professional organisations and networks – notably regional ADASS and PSW groupings – played a key role in supporting their members and providing sounding-boards for decision-making regarding adult social care service delivery throughout the pandemic.** Frequency of meetings increased at the start of the pandemic as members scrambled to address the crisis and interpret Government Guidance. **Given this, the diverse approach taken to the interpretation of the Guidance remains somewhat puzzling.**
7. **It is reported that minutes of the West Midlands Directors of Social Services meeting in January 2021 stated that easements in the first wave “caused significant anxiety and distress to the public and would not be considered unless as a last resort”. These minutes appear at conflict with other statements by Local Authorities e.g. that easements had not resulted in notable “complaints or challenges” at local level.**
8. **Stakeholder reporting suggests that a paucity of data has made it difficult to identify clear lessons and conclusions from this experience to date.** This has hindered research into the impact of the pandemic and associated mitigations, both on the adult social care workforce and on those who draw on services. At the start of the pandemic, it appears that insufficient weight was placed on gathering and recording detailed data; for example, the CQC listing of Local Authorities that had activated higher-level easements did not provide dates or pertinent details; elsewhere, minutes of some meetings are unavailable; survey data is limited.

Lessons for Future Pandemic Planning

1. **Ensure that draft Pandemic Planning legislation and associated guidance is made available in the public domain at an early stage to facilitate scrutiny and to reduce the prospect of uncertainty and inconsistent approaches.**
2. **Do not use terms such as easements which have a very specific legal meaning in other contexts.**
3. **Regular emergency planning exercises should continue within and across Local Authorities, with the DHSC and relevant professional organisations sharing and feeding in key intelligence to be integrated at regional and local levels.**
4. **A more clearly defined operating model, both distinguishing and explaining the interface between different sets of guidance, is required. This would help ensure clarity in making and communicating decisions around closures and changes to services and opportunities in pandemic conditions.**
5. **The need for genuinely inclusive participatory co-production of policy has never been more acute, nor more apparent. At Local Authority level, it would be useful to have a dedicated contact point at DHSC available to respond to immediate queries and crises. The newly formed DHSC Regional Assurance team went some way to bridging the communication gap between central and local government; a permanent role of this**

type may prove effective. **Improved and ongoing relationship, information transfer, and co-production between DHSC, Local Authorities, professional bodies, third sector organisations, community groups, and those who draw on support is essential going forward.**

6. **Improved systems are needed to monitor implementation and impacts of any future legislative changes with a clearly assigned role to a specific Government Department, would support intelligence gathering, enable learning and drive policy change.**

Key findings for Future Social Care Provision beyond the Pandemic

1. Councils, communities, and third sector organisations can work wonders together with resourcing, communication, and mutual respect. The most positive finding from stakeholders across the board was that communities – in the broadest sense – pulled together at the onset of the crisis, building trust and creative responses. **The future challenge is to ensure that, where they have developed, such collaborative relationships can be maintained and built upon.**
2. Adult social care provision was already under severe pressure pre-pandemic. Stakeholders told us that the crisis only amplified existing problems following many years of austerity and cuts. There remain serious concerns that without reframing the funding model the legacy of Covid-19 may simply be one of exacerbating existing shortcomings. **There are growing calls for genuine co-production to rethink and reform the adult social care model more fundamentally at policy level “to close the gap between the positive ambition of the Care Act 2014 and the reality on the ground.”**¹
3. Interpretation of new legislation and amendments to existing legislation requires a high level of legal literacy. The complexity and ambiguity of parts of the Guidance, and the subsequent need to balance checks and rights across existing and temporarily amended legislation, led to difficulties in interpretation and divergent approaches and outcomes across Local Authorities. This in turn relates to ongoing concerns regarding the need for support and supervision to ensure that professionals and care workers understand and can effectively apply the principles of the Care Act 2014 and the Human Rights Act 1998 at operational level. **Increase legal component in ongoing training and supervision at Local Authority level for social care staff and the social work profession, and embed such training as mandatory for care providers and those working in the sector, with regular opportunities for senior staff to revisit legislation and its operational implications.**
4. The transference to remote access technology creates potential but also pitfalls. Online working methods protected workforce health and capacity during the height of the pandemic, but concerns have been raised with regard to the move from face-to-face interactions relating to loss of access (safeguarding), contact (to build

¹ As stated by #socialcarefuture at <https://socialcarefuture.blog>

relationships and counter social isolation), and efficacy of assessments undertaken remotely (missing wider context). Increasingly digital alternatives have been utilised when day centres were closed. Digital exclusion remains a real issue among those who draw on social care. Digital alternatives may not be accessible and feasible for independent use; for example, for persons lacking mental capacity or for those who may find the experience of communicating via a screen confusing or distressing. In response to this shift, West Midlands ADASS and partners have already initiated a consultative programme to shape 'adult social care digital leadership' regionally and nationally.² **Any decisions to switch longer-term to online assessments, and indeed any aspect of service delivery, should be fully risk-assessed and subject to broad consultation with those who draw on support, carers groups, social care professionals and the wider community.**

5. Community advocacy and disabled people's organisations remain concerned that there is a risk that services and provisions that were paused, reduced or stopped during the pandemic may not return to 'normal' and that provision and rights may be rolled back in the future. **These real concerns need to be addressed by Local Authorities going forward.**
6. The pandemic experience demonstrated the tensions in the crucial interface between the NHS and social care, exemplified by hospital discharge processes and their implications for care home residents and workers, and for community care. Specific resource was introduced to address the process of rapid hospital discharge in the interim. However, the relationship between health and social care remains a potential fault line. **The move towards Integrated Care Systems as a partnership between the NHS and adult social care must be consistently monitored to ensure that all stakeholders have a place at the table, a voice in decision-making, and a fair share of resources.**

² <https://lgiu.org/the-west-midlands-is-investing-in-adult-social-care-digital-leadership-and-you-can-too/>

I. INTRODUCTION

The Covid-19 pandemic has had profound impacts across society as a whole.³ It was inevitable that there would be concerns about the effect of the pandemic and the emergency statutory provisions enacted at its outset on those who rely on social care.⁴ Those who draw on adult social care support may be older and living with dementia or other chronic illnesses, or they may have a physical or learning disability. These factors placed them in a vulnerable position both in relation to the risk of infection and in terms of the social isolation and deprivations associated with lockdowns and shielding; they were severely and disproportionately impacted.

Taking the West Midlands as a case study, we examine the impact of the Coronavirus Act 2020 and other infection control mitigations on the provision of adult social care across the region. Our study focuses on Local Authorities that took up the Government's offer to implement 'easements' that allowed them to depart from the existing statutory obligations in the Care Act 2014 when workforce capacity and resources were under extreme pressure.

The Report examines

1. The relationship between the existing and emergency legislation around adult social care provision;
2. The impact of the pandemic and the emergency measures on adult social care provision in terms of decision-making, prioritisation, and practical support on the ground in the early months of the pandemic; the implementation of statutory 'easements' and their impact on social care; and what happened once the easements were formally withdrawn;
3. For comparison, what happened in local authorities where 'easements' were not formally notified;
4. What these experiences suggest about the effectiveness of national and Local Authority level preparedness and emergency planning in relation to adult social care;
5. How far pandemic practices have changed the nature of and expectations regarding the delivery of adult social care services;
6. The lessons that can be learned from the West Midlands' experience in relation to national debates around the reform of adult social care provision.

The research is informed by a review of the 'grey literature', including Government guidance, minutes of meetings, and formal reports in the public domain, as well as interviews with a broad range of stakeholders – those representing disabled and older peoples' organisations; advocates and legal experts; and directors of adult services, social workers, and resilience leads at Local Authority level. We hope that this report will provide a clear picture of the

³ House of Commons Health and Social Care, and Science and Technology Committees *Coronavirus: lessons learned to date*. Sixth Report of the Health and Social Care Committee and Third Report of the Science and Technology Committee of Session 2021–22 HC 92.

⁴ See further for an examination of some of the broader impacts P. Dunn, L. Allen, A. Alarilla, F. Grimm, R. Humphries, H. Alderwick *Briefing: Adult social care and COVID-19 after the first wave* The Health Foundation 2021, https://www.health.org.uk/sites/default/files/upload/publications/2021/AdultSocialCareAndCOVID-19AfterTheFirstWave_WEB.pdf

pressures faced by West Midlands Local Authorities during the pandemic and the ways in which their decisions and interpretation of national level policy changes impacted on the lives of local residents across diverse communities when they were at their most vulnerable. This is an ongoing study and this Report presents initial findings and lessons drawn from our first tranche of interviews. We view these lessons from the West Midlands as a case study with much broader implications for the UK as a whole.

II. PANDEMIC PLANNING AND SOCIAL CARE: THE DEVELOPMENT OF THE CONCEPT OF 'EASEMENTS'

The House of Commons Health and Social Care Select Committee and Science and Technology Select Committee have stated that

13. The Government and the NHS both failed adequately to recognise the significant risks to the social care sector at the beginning of the pandemic. Until the social care working group was established in May 2020, SAGE either did not have sufficient representation from social care or did not give enough weight to the impact on the social care sector. Without such input and broader expertise, Ministers lacked important advice when making crucial decisions.⁵

While it is clear that SAGE may not have given sufficient weight to adult social care, as we will see there was in fact a history of input from social care policy actors into pandemic planning. The greater issue is that this input appears not to have been sufficiently efficacious or timely in the drafting of policy, legislation, or indeed implementation.

The term 'easement' is a technical term in Land Law concerning certain specific rights benefiting one piece of land over another piece of land, for example a right of way.⁶ Its introduction into social policy was novel and incongruous. However, a blueprint of sorts existed prior to the start of the pandemic. In 2016, the Government staged 'Exercise Cygnus' (18-20 October 2016) to test multi-agency preparedness at national, regional and local levels.⁷ Although the overall focus was on the maintenance of public health and supply chains, the resultant Report identified lessons and made recommendations that concerned social care provision and, specifically, the need for operational flexibility in response to pandemic conditions.⁸

It stated that

A methodology for assessing social care capacity and surge capacity during a pandemic should be developed. This work should be conducted by DCLG {Department of Communities and Local Government} DH {Department of Health} and Directors of Adult Social Services {DASS} and with colleagues in the Devolved Administrations.⁹

and acknowledged that

there needs to be a working group to access information about social care capacity and requirements. There might be 100s of vulnerable people who won't get the help that they want or need and won't be identified.¹⁰

⁵ House of Commons Health and Social Care, and Science and Technology Committees *Coronavirus: lessons learned to date* Sixth Report of the Health and Social Care Committee and Third Report of the Science and Technology Committee of Session 2021–22 HC 92 at pages 7-8.

⁶ See *Re Ellenborough Park* [1955] EWCA Civ 4.

⁷ *Exercise Cygnus Report Tier One Command Post Exercise Pandemic Influenza 18th to 20th October 2016*. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/927770/exercise-cygnus-report.pdf

⁸ *Ibid* at page 8.

⁹ *Ibid*, A.5, page 24.

¹⁰ *Ibid*.

Following Exercise Cygnus, the Civil Contingencies Secretariat (CCS) and DHSC led a cross-government, multi-sectoral Pandemic Flu work programme. Multiple workstreams engaged multiple stakeholders across Westminster and the Devolved Administrations with the aim of developing draft legislation to be used in the event of a future pandemic. One workstream focused specifically on “the improvement of health and care sector plans to flex systems and resources to expand beyond normal capacity levels.”¹¹ The Pandemic Influenza Briefing Paper ‘Adult Social Care and Community Healthcare’ was produced in June 2018 to set out plans for the Chief Medical Officer, Chief Scientific Advisor, Chief Nursing Officer and Chief Social Worker. It included “key options and considerations to maintain and augment the community health care and adult social care sectors’ response to an extreme influenza pandemic.”¹²

Thus, although the Covid-19 situation was in many ways “unprecedented” the potential impact of a reasonable worst-case scenario on social care had been envisaged in prior pandemic planning. It is therefore somewhat surprising that the Covid-19 pandemic appeared to have caught so many of those working in social care at Local Authority level off-guard, not least as the Association of Directors of Adult Social Services (ADASS) had been asked by the Department of Health to support its work in pandemic planning through provision of adult social care expertise in 2018.¹³

For example, a 2018 ADASS briefing paper identified regulatory and process easements that DASSs might require to manage the reprioritisation of needs and delivery of services in a future Pandemic Flu response.”¹⁴ These should be planned rather than ad hoc, and would include such things as briefer needs assessments in determining eligibility for services “followed by reviews as necessary.”¹⁵ Similar suggestions for easements were also made by the Care Providers Alliance and the Home Care Association UK (UKHCA).¹⁶ The need for a clear communication strategy transmitting from national through to local level and utilising social media was emphasised.¹⁷ While the importance of communication was stressed, messaging of information concerning easements during the early stages of the pandemic was problematic in some areas.

ADASS have a series of professional groups at regional level such as the West Midlands ADASS.¹⁸ Their potential role in a pandemic was highlighted by ADASS in its 2018 document ‘Proposals to support Directors of Adult Social Care and local areas to prepare now for a future flu pandemic’ as follows:

¹¹ <https://committees.parliament.uk/writtenevidence/10701/html>.

¹² ‘Pandemic Influenza briefing paper: Adult social care and community health care’ at page 5 <https://www.leighday.co.uk/media/gilfgpwy/pandemic-influenza-briefing-paper-adult-social-care-and-community-health-care.pdf>

¹³ <https://www.adass.org.uk/guide-for-pandemic-flu-planning>

¹⁴ <https://www.adass.org.uk/media/7887/flu-pandemic-easement-report-final-april-2018.pdf>, at page 4.

¹⁵ Ibid, para 5.3 and recommendation 7.

¹⁶ Ibid. at page 10.

¹⁷ The Communications and Support Infrastructure required by DASSs to support them communicating service reprioritisation in a future Pandemic Flu response April 2018 <https://www.adass.org.uk/media/7884/adass-pandemic-flu-communications-report-final-april-2018.pdf>.

¹⁸ <https://wm-adass.org.uk/>

6. The role of ADASS branches in providing mutual aid

ADASS branches will be an ideal place for DASSs to work together on cross-boundary issues and manage fluctuating demand and supply across local authority boundaries. The benefits of mutual support and regional/sub regional activity should not be underestimated.¹⁹

It is also clear that these ADASS documents were not simply left without consideration after 2018; they were considered to have ongoing relevance. While these documents were prepared for a flu pandemic, the ADASS website goes on to state that

The guide was recommended as reference for DASSs during work to prepare for No-Deal Brexit as much of the material was transferable in terms of service continuity. We have further recommended DASSs refer to the guide in relation to the coronavirus pandemic.²⁰

So there was awareness in the adult social care community from an early stage of some of the key pandemic planning issues which needed to be addressed from the outset, albeit at this stage the working model was still that of Pandemic Flu rather than that of Covid-19.

¹⁹ <https://www.adass.org.uk/media/7886/guidance-for-dasss-planning-for-pandemic-flu-final-april-2018.pdf> at page 11.

²⁰ <https://www.adass.org.uk/guide-for-pandemic-flu-planning>

III. THE IMPACT OF THE CORONAVIRUS ACT 2020 AND RELATED GUIDANCE ON THE OPERATION OF THE CARE ACT 2014

The Care Act 2014 is a wide-ranging piece of legislation concerning social care provision.²¹ The focus in this report is on those aspects of the legislation which are applicable to adults. As was seen in the previous section, the prospect of altering legislative provisions concerning adult social care had been anticipated for several years prior to 2020 as part of Pandemic Flu planning.

Measures to address the impact of the pandemic on social care provision were ultimately included in the emergency legislation known as the Coronavirus Act 2020.²² The Act received Royal Assent on 25th March 2020 and took effect on 31st March 2020. Our focus here is the approach taken in England, as different legislation is applicable across the devolved jurisdictions.²³ Section 15 concerned provisions regarding Local Authority care and support and this needed to be read in conjunction with schedule 12 of the Act, as well as supporting Guidance documents designed to aid local-level decision-making. Schedule 12 set out provisions which modified aspects of the Care Act 2014. We focus on those provisions which concern adults in need of care and support. Provision is also made in the legislation for the production of related Guidance and this is discussed below.²⁴ Notably, there is consistent use of the word “easement” in pre-Covid pandemic planning documents. However, the term was not used in the Coronavirus Act 2020, unsurprisingly given its very specific meaning in the context of Land Law.

Assessment of Needs

First, Schedule 12²⁵ provided that Local Authorities did not have to comply with duties in relation to assessing an adult’s needs for care and support;²⁶ assessment of a carer’s needs for support;²⁷ or duties to provide written records of those assessments.²⁸ Secondly, the Local Authority was not required to comply with the duty to determine whether a person’s needs met the eligibility criteria under section 13 of the Care Act 2014.²⁹ However Local Authorities were still able to undertake assessments/determinations should they think this appropriate.³⁰ In addition, Local Authorities were not required to comply with the duties of notification and assessment under section 37 of the Care Act 2014 where a person moves to a new Local

²¹ See further L. Clements, with K. Ashton, S. Garlick, C. Goodall, E. Mitchell and A. Pickup *Community Care and the Law* (Legal Action Group 2019).

²² A. Greene, *Emergency Powers in a Time of Pandemic* (Bristol University Press, 2020).

²³ J. Sargeant, IfG Insight October 2020. Co-ordination and divergence. *Devolution and coronavirus*. <https://www.instituteforgovernment.org.uk/sites/default/files/publications/coordination-divergence-devolution-coronavirus.pdf>

²⁴ Schedule 12, para 18, Coronavirus Act 2020.

²⁵ Schedule 12, para 2(1) Coronavirus Act 2020.

²⁶ Duty imposed by section 9 Care Act 2014.

²⁷ Duty imposed by section 10 Care Act 2014.

²⁸ Sections 12(3)(4) Care Act 2014 duties, and consequently the duty under section 11 of the Care Act 2014 relating to refusal of assessment also did not apply.

²⁹ Schedule 12(2) Coronavirus Act 2020.

³⁰ Schedule 12 (4) Coronavirus Act 2020.

Authority area or under section 38 of the Care Act 2014 where assessments are not complete on the day of the move.

Assessment of Financial Resources and Charging for Services

Local Authorities were also not required to comply with duties in relation to assessment of financial resources under section 17 of the Care Act 2014.³¹ If the Local Authority provided services during the emergency period under sections 18, 19, 20 or 62 of the Care Act 2014 and would have been entitled to charge for those services but at that time decided not to undertake an assessment under section 17 of the Act, the Local Authority was able to subsequently undertake that assessment and make a retrospective charge for meeting those needs during that period.³² As Sloan notes, “some users may be surprised to be faced with charges after the event, and giving “reasonable information in advance” about this (as the Guidance puts it) is particularly important.”³³

Provision and Review of Care and Support

The Coronavirus Act 2020 amended section 18 of the Care Act 2014 which sets out the duties imposed upon Local Authorities to meet the needs for adult care and support if they meet the eligibility criteria. Schedule 12, para 4 Coronavirus Act 2020 provided that:

Section 18 of CA 2014 (duty to meet needs for care and support) has effect as if for subsection (1) there were substituted—
“(1) A local authority must meet an adult’s needs for care and support if—
(a) the adult is ordinarily resident in the authority’s area or is present in its area but of no settled residence,
(b) the authority considers that it is necessary to meet those needs for the purpose of avoiding a breach of the adult’s Convention rights, and
(c) there is no charge under section 14 for meeting the needs or, in so far as there is, condition 1, 2 or 3 is met.
In this subsection “Convention rights” has the same meaning as in the Human Rights Act 1998.”

Similar amendments were made to section 20 of the Care Act 2014 concerning duties and powers which sets out the obligation to meet carer’s needs for support.³⁴ This meant that in relation to the obligation to meet needs for care and support, the existing provisions were amended to increase discretion for Local Authorities. The legislation required that needs had to be met if this was necessary to avoid constituting a breach of an adult’s rights as stated under the European Convention of Human Rights provisions (which form part of domestic law). Moreover, the Guidance stated that once the period in which the easements were operational came to an end, a full needs assessment would need to be undertaken.³⁵

³¹ Schedule 12, para 3 Coronavirus Act 2020.

³² Schedule 12 Para 10 Coronavirus Act 2020.

³³ B. Sloan “Easing” Duties and Making Dignity Difficult: COVID-19 and the Care Act 2014” (2021) *Public Law* 37.

³⁴ Schedule 12, para 10, Coronavirus Act 2020.

³⁵ B. Sloan, “Easing” Duties and Making Dignity Difficult: COVID-19 and the Care Act

The supporting Guidance to Local Authorities stressed that these amendments to the Care Act provisions were temporary, and only to be used as a last resort “where this is essential in order to maintain the highest possible level of services. They should comply with the pre-amendment Care Act provisions and related Care and Support Statutory Guidance for as long and as far as possible.”³⁶ This Guidance was received by Local Authority staff shortly after the emergency legislation came into force.

Although the ECHR is cited as a “floor” below which services should not drop, the real-life utility of this provision was questioned. First, as Brian Sloan comments, the

legal significance of this distinction is presumably limited, since a legal authority as a “public authority” would remain bound by Convention rights as judicially and objectively determined through the Human Rights Act 1998. Its effect in practice may nevertheless be considerable in deterring challenges to local authority action or inaction.³⁷

Brian Sloan suggests that the applicability of the ECHR in this context may be limited, noting the case of *McDonald v UK*³⁸ although e.g. failure to assess needs and provide requisite services in the case of *R (Bernard) v Enfield LBC* led to a successful challenge in relation to Article 8 of the ECHR, the right to privacy of home and family life.³⁹ Although the Care Act 2014’s “wellbeing” principle was retained – namely the duty placed on a Local Authority regarding Part 1 of the Care Act functions to provide for the individual’s wellbeing – Sloan notes that even during the implementation of the 2014 legislation “the Government admitted that the principle was not designed to require a Local Authority to “undertake any particular action in ... itself.”⁴⁰ Further, “one of the ways in which the principle was invoked before the 2020 Act was as part of the needs assessment duty... of which the Act misapplies in addition to the national eligibility threshold. So precious little comfort is likely to be gained from that principle either.”⁴¹ Moreover Harding and Taşcıoğlu’s research indicates the limited awareness that care professionals have of human rights law.⁴² This is reflected in the comments of the British Institute of Human Rights, who stated that:

2014” (2021) Public Law 37 and *Care Act Easements: Guidance to Local Authorities*. Updated 29 June 2021. <https://www.gov.uk/government/publications/coronavirus-covid-19-changes-to-the-care-act-2014/care-act-easements-guidance-for-local-authorities> (ss.4).

³⁶ Care Act Easements: Guidance to Local Authorities Updated 29 June.

2021. <https://www.gov.uk/government/publications/coronavirus-covid-19-changes-to-the-care-act-2014/care-act-easements-guidance-for-local-authorities>

³⁷ B. Sloan “Easing” Duties and Making Dignity Difficult: COVID-19 and the Care Act 2014” (2021) Public Law 37.

³⁸ *McDonald v United Kingdom* (2015) 60 E.H.R.R. 1.

³⁹ *R(Bernard) v Enfield LBC* [2002] EWHC Admin; see further L. Clements, with K. Ashton, S. Garlick, C. Goodall, E. Mitchell and A. Pickup *Community Care and the Law* (Legal Action Group 2019), chapter 2.

⁴⁰ B. Sloan “Easing” Duties and Making Dignity Difficult: COVID-19 and the Care Act 2014” (2021) Public Law 37; see also re the application of the ECHR, A. Ruck-Keene “Capacity at the Time of Coronavirus” (2020) 70. *International Journal of Law and Psychiatry* 101560.

⁴¹ *Ibid.* Sloan (2021).

⁴² R. Harding and E. Taşcıoğlu, ‘Everyday Decisions Project: Supporting Legal Capacity Through Care, Support and Encouragement’ <http://www.legalcapacity.org.uk/research-findings> and also see R. Harding “Covid-19 in Adult Social Care” in D. Cowan and A. Mumford (eds) *Pandemic Legalities Legal Responses to Covid-19 Justice and Social Responsibility*. Bristol University Press (2021).

It is **unrealistic to expect local authority staff to be able to make this decision**. There is no mandatory human rights training for such staff, and very little integrated and consistent guidance. Each year **BIHR works with over 2,000 staff members who make these decisions and people subject to them; in our observations less than 10% are able to name the legally protected rights at stake, less still are able to identify when this is relevant to their decisions applying other law and policy or are aware of their legal duty to do so under the Human Rights**.

On the surface the reference to human rights exceptions appears to be a bottom-line safety net; the reality is very different. People who are already in vulnerable positions will likely be made more vulnerable, and there will be no duty to support those who develop needs in the future. There will undoubtedly be knock-on effects for the NHS as those in need seek support elsewhere. In the current circumstances, which recognises the risks to those in vulnerable categories, this position is highly worrying.⁴³

Furthermore concerns had already been expressed regarding a lack of understanding of the application of the Care Act itself among social care professionals.⁴⁴ In addition, the 2020 Act provided that Local Authorities did not have to comply with a series of duties in relation to the preparation and review of care and support plans or of care plans under sections 24- 25 and section 27 (1), (4), (4A) and (5) of the 2014 Act.⁴⁵

Critically there are also inbuilt degrees of discretion in relation to aspects of the provision of care and support under section 8 of the Care Act 2014. Rather than specifying precisely the services which must be provided to meet needs, the section rather presents a list of examples. This format can in itself be seen to facilitate degrees of “flexibilities” in terms of the manner in which the legislation can be interpreted. This is important when considering the various “stages” of the DHSC Guidance concerning easements, examined below.

Care Act Easement Guidance

As noted above the Coronavirus Act provided in schedule 12, para 18 that Guidance should be produced regarding the operation of the legislation.⁴⁶ This Guidance would prove crucial to local level decision making, and to Local Authorities’ ability to balance pressures on their workforce capacity with the needs and rights of those they remained legally bound to support.

A National Adult Social Care (Covid-19) Group (NACG) was established.⁴⁷ Various stakeholders in the social care sector were quickly recruited into working groups involved in drawing up

⁴³ 43. The British Institute of Human Rights “Human Rights Implications of the Coronavirus Bill: The risk of making vulnerable adults and children even more vulnerable” March 2020. 24 March 2020 <https://www.bihar.org.uk/Handlers/Download.ashx?IDMF=cbee6fca-27dc-49bb-b4f5-21f8da981d6e> at page 5.

⁴⁴ A.J. Jenkinson, and J. Chamberlain, ‘Social workers’ knowledge and skills and the Care Act: Practice Advice Note’ November 2019, [https://kclpure.kcl.ac.uk/portal/en/publications/social-workers-knowledge-and-skills-and-the-care-act\(cddac755-ca01-4e1e-840e-f104d19f60e9\).html](https://kclpure.kcl.ac.uk/portal/en/publications/social-workers-knowledge-and-skills-and-the-care-act(cddac755-ca01-4e1e-840e-f104d19f60e9).html)

⁴⁵ See Schedule 12, para 11 A.

⁴⁶ *Care Act Easements: Guidance to Local Authorities*. Updated 29 June 2021. <https://www.gov.uk/government/publications/coronavirus-covid-19-changes-to-the-care-act-2014/care-act-easements-guidance-for-local-authorities>

⁴⁷ See Directors of Adult Social Services Themes and Learning from ADASS Members on the Local Response to COVID-19 in Spring and Early Summer 2020 at page 2 <https://www.adass.org.uk/media/8265/themes-and->

the supporting guidance with the DHSC. These included the Association of Directors of Adult Services (ADASS), British Association of Social Workers (specifically Mark Harvey and Fran Leddra at the Office of the Chief Social Workers),⁴⁸ Local Government Association (LGA), Ministry of Housing, Communities and Local Government (MHCLG), and Think Local Act Personal (TLAP).⁴⁹ Two official Guidance documents were produced: 1) general Supporting Guidance on the Care Act Easements;⁵⁰ and 2) Guidance for Local Authorities.⁵¹ These needed to be considered in relation to the Ethical Framework for Adult Social Care.⁵² Both sets of easements Guidance are now withdrawn, but the Ethical Framework remains in place.

The Four Stages

The Guidance identified four “stages” or categories of easement in ascending order of seriousness and scope. The first two stages involved some “flexing” of Care Act provisions and obligations – this might involve a change in the mode of operation, e.g. from face-to-face to online or telephone communications. If the higher two stages were reached, the council would be formally operating under Care Act easements. While the Guidance set out recommendations for the conditions under which Local Authority officers could or should activate an easement to their Care Act obligations, only the higher-level easements (Stages 3 and 4) required formal notification to the Department of Health and Social Care.⁵³

Stage 1: “Business as usual,” operating as per pre-amendment Care Act.

Stage 2: “Applying flexibilities” under the pre-amendment Care Act “to prioritise short term allocation of care and support using current flexibilities within the Care Act.”⁵⁴

Stage 3: “Streamlining services under Care Act easements.”

Stage 4: “Whole system prioritising care and support,” which effectively meant rationing and withdrawal of some services.⁵⁵

[learning-from-adass-members-on-the-local-response-to-covid-19-in-spring-and-early-summer-2020-041120.pdf](#)

⁴⁸ The Report of the Chief Social Workers states that “As CSW, we led on the development of guidance to ensure, where used, they were done so with clear decision making and oversight” at para 3.3.1.

<https://www.gov.uk/government/publications/chief-social-workers-for-adults-annual-report-2020-to-2021/chief-social-workers-annual-report-2020-to-2021>

⁴⁹ TLAP, hosted by the Social Care Institute for Excellence, is a “national partnership of more than 50 organisations committed to transforming health and care through personalisation and community-based support.” <https://www.thinklocalactpersonal.org.uk/About-us/>

⁵⁰ <https://www.gov.uk/government/publications/coronavirus-covid-19-changes-to-the-care-act-2014/care-act-easements-supporting-guidance>

⁵¹ <https://www.gov.uk/government/publications/coronavirus-covid-19-changes-to-the-care-act-2014/care-act-easements-guidance-for-local-authorities>

⁵² <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>

⁵³ *Care Act Easements: Guidance to Local Authorities*. Updated 29 June 2021.

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

⁵⁴ Ibid at page 8.

⁵⁵ Ibid.

Stages 3 and 4 were the Care Act easement stages, though our interviews suggest that there was a sense of ambiguity around the boundaries of each stage, and scope for individual interpretation about when activities and practices at council level might tip from one stage into another.

As noted above, the ECHR provisions provided a floor in relation to meeting the needs of service users and carers. The Guidance for Local Authorities stated that

Local authorities will remain under a duty to meet needs where failure to do so would breach an individual's human rights under the European Convention on Human Rights (ECHR). These include, for example, the right to life under Article 2 of the ECHR, the right to freedom from inhuman and degrading treatment under Article 3 and the right to private and family life under Article 8.⁵⁶

While Stages 2 and Stage 3 in the Guidance appeared distinct, in practice, as we shall see below, the "flexibilities" incorporated by some Local Authorities operating in Stage 2 were often referred to as "easements". The Guidance set out the steps which should be taken before easements were introduced:

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.⁵⁷

While the Guidance recognised different Local Authorities have different structures and protocols, the decision to undertake easements should be undertaken by the Director of Adult Social Services (the DASS) along with the Principal Social Worker.⁵⁸ The decision to implement easements should be recorded, along with the evidence taken into consideration in reaching that decision. The Guidance stated that

Where possible the record should include the following:
The nature of the changes to demand or the workforce;
The steps that have been taken to mitigate against the need for this to happen;
The expected impact of the measures taken how the changes will help to avoid breaches of people's human rights at a population level;
The individuals involved in the decision-making process; and
The points at which this decision will be reviewed again.⁵⁹

Although the Guidance included a checklist for assessing capacity and need,⁶⁰ many Local Authorities developed their own R-A-G (Red-Amber-Green) rating systems to track the fast-

⁵⁶ Ibid at page 4.

⁵⁷ Ibid at page 6.

⁵⁸ Ibid.

⁵⁹ Ibid.

⁶⁰ <https://www.gov.uk/government/publications/coronavirus-covid-19-changes-to-the-care-act-2014/care-act-easements-guidance-for-local-authorities>

changing situation, inform decision-making and, in some cases, trigger the use of higher-level easements.

Notification, Publication and Communication of the Care Act Easements

The use of the higher-level easements was to be formally notified by the Local Authority directly to the Department of Health and Social Care via a dedicated email address. However, in a webinar hosted by the DHSC on 4th April 2020, Rhia Roy, the DHSC Policy Lead for Care Act Easements Guidance, stated that

There is no set format which should be used to present evidence of consideration of easements to DHSC. Any report to DHSC only needs to be brief and should explain why the decision to prioritise services under the easements has been taken and briefly provide any relevant detail.

Appropriate evidence to back up the decision is expected as part of the internal process but does not need to be shared with DHSC. What is considered appropriate will vary locally, depending on local circumstances and the extent to which the easements are used. Some Local Authorities may wish to use their own template locally or to share this with their networks⁶¹

This is interesting in that the rationale for the decision appears to be seen as a matter for the Local Authority rather than one meriting detailed external scrutiny by the DHSC. The Guidance does make reference to the use of a notification form:⁶² to be used first, when the easements were established; secondly, if their use changed; and thirdly, when they ceased to use the easements.⁶³

Despite this, the task of publishing the online record of which Local Authorities were operating under easements given to the Care Quality Commission (CQC) rather than the DHSC. A call by the National Care Forum at a Webinar by the Adult Social Care Covid-19 Forum that Local Authorities be given guidance as to the method of communication of the decision to “key audiences” was met with the following response

RR: [Rhia Roy DHSC] Local Authorities are experienced at communicating with their key audiences and are best placed to decide how to communicate regarding the easements. The guidance emphasises the importance of appropriate communication.

⁶¹ Adult Social Care Covid-19 Forum – weekly teleconferences 08/04/2020, 13:00-14:00: ‘Care Act Easements’ <https://www.careengland.org.uk/sites/careengland/files/Care%20Act%20Easements%20-%20Webinar%20Readout%20and%20QA%20v3.pdf>

⁶² *Care Act Easements: Guidance to Local Authorities*. Updated 29 June 2021. <https://www.gov.uk/government/publications/coronavirus-covid-19-changes-to-the-care-act-2014/care-act-easements-guidance-for-local-authorities> at page 6.

⁶³ Ibid.

JB [James Bullion, ADASS]: Amending the guidance would only serve to re-emphasise that Local Authorities have pre-existing expectations on them to communicate. This is best practice and can be seen in TLAP “I” statement.⁶⁴

As we will see, however, the absence of clear guidance on communications may have contributed to the lack of consistency and to questions of public trust around the implementation of the easements at the outset. There were also issues in relation to accessibility of information for users of services. Unlike the DHSC, Mencap produced an “Easy Read Guide”⁶⁵ to the easements, as did City of Wolverhampton Council, one of the West Midlands Local Authorities that did not introduce easements;⁶⁶ Coventry City Council, which did enact higher-level easements, also produced a “One Minute Guide”.⁶⁷

The Ethical Framework

Both sets of Guidance state that Local Authorities were also required to comply with the Ethical Framework for Social Care, which provides a principled rationale for decision making.⁶⁸ Devised by DHSC in conjunction with the Office of the Chief Social Workers, then led by Mark Harvey and Fran Leddra, this document draws on existing professional practice standards combined with earlier iterations existing ethical guidance from Pandemic Flu exercises.⁶⁹ It “introduces a set of core ethical values and principles, which provide a structure to ensure rights and strengths-based social work values are embedded when organising and delivering adult social care.”⁷⁰

The Ethical Framework sets out a series of principles including “respect”; “reasonableness”; and “minimising harm”, with the aim of

striving to reduce the amount of physical, psychological, social and economic harm that the outbreak might cause to individuals and communities. In turn, this involves ensuring that individual organisations and society as a whole cope with and recover from it to their best ability.⁷¹

⁶⁴ See Adult Social Care Covid-19 Forum weekly teleconferences 08/04/2020: ‘Care Act Easements’ <https://www.careengland.org.uk/sites/careengland/files/Care%20Act%20Easements%20-%20Webinar%20Readout%20and%20QA%20v3.pdf>.

⁶⁵ <https://www.mencap.org.uk/sites/default/files/2020-04/Care%20Act%20easements%20easy%20read%20guide%20%281%29.pdf>

⁶⁶ https://consultation.wolverhampton.gov.uk/cwc/care-act-easement-procedure/user_uploads/care-act-easements-er.pdf.

⁶⁷ https://www.coventry.gov.uk/downloads/file/32626/care_act_easement_one_minute_guide.

⁶⁸ <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>.

⁶⁹ Ibid. It was “adapted and refreshed from the ethical framework first developed by the Committee on Ethical Aspects of Pandemic Influenza in 2007, which was later revised by the Department of Health and Social Care (DHSC) in 2017.”

⁷⁰ Chief Social Workers’ *Annual Report 2020-2021* at para3.1.1. <https://www.gov.uk/government/publications/chief-social-workers-for-adults-annual-report-2020-to-2021/chief-social-workers-annual-report-2020-to-2021>. See further C. Elves and J. Herring “Ethical framework for adult social care in COVID-19” (2020) *Journal of Medical Ethics* 662.

⁷¹ <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>.

Decision-making must be “inclusive,” “accountable, and “flexible”. The principles of “proportionality” and “community” are also included. The specific choice of “community”, rather than “solidarity”, is perhaps telling once one looks at the extraordinary role of third sector organisations, spontaneously developed mutual aid support groups, and indeed family, friends, and neighbours. It is readily acknowledged that Local Authorities would have faced far greater challenges without the support of the communities they serve.

The Framework was criticised by Elves and Herring due to its undue reliance on the principles of “autonomy” and “dignity” which they deem to be “at best unhelpful when it comes to aiding decision-makers deliberating on ethically fraught and practically complex care prioritisation decisions.”⁷² Issues were also raised by practitioners in the BASW Adult Social Work Group regarding the Guidance who were concerned about a lack of guidance on process, a lack of monitoring, and a lack of emphasis on the duty to work within the parameters of existing human rights legislation:

there is arguably a need for further guidance to ensure operational consistency and transparency. In particular there is concern about the lack of guidance on the duty to apply the ECHR, and the lack of recognition that this is an issue.⁷³

Impact of NHS Discharge on Social Care Planning

While the operation of the Stage 2 flexibilities and Stages 3 and 4 Care Act easements can be seen as very much an issue for adult social care, one of the notable drivers for change in social care practice in this period was the move to rapid discharge of patients from NHS wards into care homes and into the community as part of the process of readying hospitals to receive Covid-19 patients. There was a real fear that the hospitals would very rapidly become overwhelmed. Discharge policies provided that individuals were to be discharged rapidly if they were clinically ready.⁷⁴ This would be accompanied by Government fully funding “new or extended out-of-hospital health and social care support packages.”⁷⁵

This was supported by the inclusion in section 14 of the Coronavirus Act 2020 of further “easements” of existing provisions concerning assessment for NHS Continuing Health Care (which provides NHS funded care for those with very high medical care needs).⁷⁶ A detailed examination of NHS Continuing Care easements is beyond the scope of the current Report. Specific obligations were placed on Local Authorities and Directors of Adult Social Services, Clinical Commissioning Groups and the voluntary sector. Local Authorities were asked to

⁷² Elves and Herring *supra* at page 665.

⁷³<https://www.basw.co.uk/system/files/resources/BASW%20England%20Adults%20social%20work%20group%20COVID-19%20draft%20position%20statement%20-%20April%202020%20final.pdf>, see especially page 5.

⁷⁴ Coronavirus (COVID-19): hospital discharge service requirements <https://www.gov.uk/government/publications/coronavirus-covid-19-hospital-discharge-service-requirements> (withdrawn on 25th August 2020).

⁷⁵ *Ibid.*

⁷⁶ *Guidance National framework for NHS continuing healthcare and NHS-funded nursing care* <https://www.gov.uk/government/publications/national-framework-for-nhs-continuing-healthcare-and-nhs-funded-nursing-care>

agree a single contact point for each hospital or Trust, collaborate and “pool staffing” to facilitate resources and prioritisation on discharge and co-ordinate with voluntary sector organisations.⁷⁷ In addition they were to have lead contracting responsibilities drawing on the NHS Covid-19 budget to increase domiciliary care, care home and reablement service capacity.⁷⁸ Further roles were to provide redeployment of social work staff from hospital to community to support patients once discharged, “robust mechanisms” to track care placements, commissioning 7-day working for community social care teams, and to

Deploy adult social care staff flexibly in order to avoid any immediate bottlenecks in arranging step down care and support in the community and at the same time focusing on maintaining and building capacity in local systems.⁷⁹

Patients would be discharged without normal assessment processes being undertaken and, moreover, with Local Authorities not being able to provide choices regarding the place to which they were discharged. This also involved social care staff and other “trusted assessors” being redeployed to undertake this work. There was also use of the NHS Capacity Tracker/Care Home live bed state portal, a web-based app designed to help minimise delay in transfers of care by enabling care homes to instantly share their live bed status,⁸⁰ thus enabling hospital discharge teams to more rapidly find available nursing and residential beds.

⁷⁷ Ibid at para 5.1.

⁷⁸ Ibid.

⁷⁹ Ibid, at para 5.2.

⁸⁰ Ibid, at para 8.1: <https://capacitytracker.com/>

IV. THE OPERATION OF AND DECISION TO REMOVE EASEMENTS FROM THE LEGISLATION

As noted above, the introduction of easements was immediately subject to heavy criticism from disability and civil rights groups.⁸¹ There was concern about the speed with which the legislation was drafted; concern about an apparent lack of consultation and scrutiny (both Parliamentary and from external stakeholders); and indeed concern about the content and implications of the proposed legislation. A number of organisations sent Freedom of Information (FOI) requests to Local Authorities who had implemented easements regarding the operation of easements. Some of these findings are considered in relation to the discussion of individual Local Authorities below. From the outset there was concern regarding communication. A challenge was brought⁸² against Derbyshire County Council on behalf of William Runswick-Cole, who relied on support through direct payments from the Local Authority, by his mother, Professor Katherine Runswick-Cole.⁸³ The challenge questioned the lack of evidence provided by the council that the criteria set out under the Guidance for the operation of easements had been met. This dispute was ultimately resolved leading the council to make a number of concessions in relation to the manner in which it operated Care Act easements.⁸⁴

Ongoing concerns remained as to the broader impact on the rights of service users, such as adverse impacts on those with disabilities.⁸⁵ The campaign to “scrap the easements” continued through the summer and autumn months of 2020, led by Liberty, Disability Rights UK, and Inclusion London. A statement, co-signed by 62 disability NGOs, was submitted in advance of the six-month review of the Coronavirus Act 2020. They viewed the introduction of easements into social care provision, at a time of crisis, as a clear threat to the rights and wellbeing of disabled people.⁸⁶ The Government’s analysis of the provisions of the Coronavirus Act 2020 presented to Parliament on 23rd September stated that

Currently no local authorities are operating under easements. Work undertaken by our chief social workers (CSWs) shows that LAs used the powers responsibly and complied with guidance, so there is no rush to turn off powers. **Sentiments gathered from principal social workers (PSWs) and the Association of Directors of Adult Social Services (ADASS) suggest that the option to use easements in the event of a second wave is incredibly helpful.** Suspending the powers would give a powerful signal of government confidence that the adult social care (ASC) sector is returning to a “new normal” and so should form part of a wider government assessment of risk to the sector. We therefore recommend waiting until

⁸¹ “Liberty and Disability Charities Warn Councils not to Weaken Social Care During Coronavirus Pandemic 7th May 2020 <https://www.libertyhumanrights.org.uk/issue/liberty-and-disability-charities-warn-councils-not-to-weaken-social-care-during-coronavirus-pandemic/>

⁸² M.Samuel “Council faces legal challenge for suspending Care Act duties” Community Care 7th May 2020 <https://www.communitycare.co.uk/2020/05/07/council-faces-legal-challenge-suspending-care-act-duties/>:

⁸³ <https://rightsinreality.wordpress.com/2020/06/03/covid-19-banana-bread-blankets-beans-and-the-law/>

⁸⁴ M. Samuel “Council says it has ‘learned lessons’ after Care Act legal challenge dropped” Community Care 5th June 2020. <https://www.communitycare.co.uk/2020/06/05/council-says-learned-lessons-care-act-legal-challenge-dropped/>

⁸⁵ See e.g. I. Antova “Disability Rights During COVID-19: Emergency Law and Guidelines in England” (2020) 28 *Medical Law Review* 804.

⁸⁶ <https://www.libertyhumanrights.org.uk/issue/two-thirds-of-public-against-social-care-cuts-during-pandemic/>

we are confident of the position before turning them off, rather than turning them off quickly and then turning them back on again in the event of a second wave.⁸⁷

At that time the provisions were not removed by the Government. But concerns regarding social care provision during the pandemic continued to be voiced. For example, Mencap reported a survey conducted in November 2020 of 410 carers and family members of persons with learning disability whether support cut during the first National Lockdown in the period between 23rd March to 3rd July had been reinstated.⁸⁸ Of those surveyed 6.5% said services had been fully reinstated, 54.8% partially and 32.2% said that the services had not been reinstated. As before these survey findings were not broken down in relation to experience between easement and non-easement Local Authorities.

In its later response in December 2020 to the Joint Select Committee Report on Human Rights the Government noted that easements had been considered as part of the 6 month review of the Coronavirus Act 2020 and it had been decided that as the move into winter was the most difficult time of year for the NHS, the easements still needed to be available to reduce pressure if required. Finally, in March 2021 the then Secretary of State for Health and Social Care indicated that the easements would be expired in March 2021 prior to the Parliamentary Roadmap to Recovery debate. This was ultimately implemented in paragraph 4 of the Coronavirus Act 2020 (Early Expiry) Regulations 2021.⁸⁹ The provisions were expired on 16th July 2021. The Guidance was withdrawn on the 22nd July 2021.

⁸⁷ Department of Health and Social Care, *Coronavirus Act analysis*, 23 September 2020 (CP 295).

<https://www.gov.uk/government/publications/coronavirus-act-analysis/coronavirus-act-analysis>

⁸⁸ <https://www.mencap.org.uk/press-release/i-am-only-human-and-if-i-cannot-get-break-then-i-will-break-myself-eight-months-first>

⁸⁹ *The Government's Response to the Joint Committee on Human Rights Report: The Government's Response to Covid-19: Human Rights Implications* (December 2020), CP335;

<https://committees.parliament.uk/publications/4154/documents/41106/default/>.

V. CARE ACT EASEMENTS AND THE WEST MIDLANDS

This section of the Report focuses on the experience of the West Midlands in relation to the operation of easements. The West Midlands is a part of the country which was very adversely impacted during the early stages of the pandemic. It is a region with notable pockets of socio-economic deprivation and a very diverse population; these factors, along with being older and/or BAME, were notable risk factors for Covid-related mortality.⁹⁰ The West Midlands was the part of the country with the largest concentration of Local Authorities – five in total – who declared that they had implemented easements at Stages 3 and/or 4. All in this cluster of Authorities decided to activate higher stage easements in quick succession and all decided to stand down from Stages 3 or 4 after a short period of time. Some of these Authorities then indicated that they were then operating at Stage 2, while others simply stated that they had ceased the use of easements.

However, in addition to these five, there was also a group of Local Authorities that stated that they were applying “Stage 2 easements” starting in the early months of the pandemic. This was despite the fact that, as noted above, Stage 2 did not refer to “easements” but rather concerned the application of “flexibilities” within the pre-amendment Care Act. However, many of these Authorities undertook a formal internal process in reaching the decision to enact “Stage 2 easements,” with this process and information clearly documented in the minutes of meetings and publicly available decisions. One Local Authority in this group, Dudley Metropolitan Borough Council, indicated in its official records both that it had and that it had not implemented Care Act easements- this is considered below.

The final group were those of the Local Authorities that stated that they did not implement easements. This smaller group – only four councils: Shropshire, Stoke-on-Trent, Wolverhampton, and Worcestershire – stated that they had not implemented easements. Within non-easement councils there were reports of the operation of flexibilities such as movement to online working and simplified assessments but, in contrast to the previous group, the language of “Care Act easements” was not used.

Although the reasons given by each Local Authority for implementation of easements were distinct to that Local Authority, issues such as fear of understaffing due to illness and concern about pressures suffered by the NHS did emerge as common factors in the decision to activate higher stage easements.

While each Authority was undertaking their own internal, officer-level decision-making, is nonetheless notable from the interviews that there were extensive ongoing discussions and meetings – both formal and informal – taking place between members of the professional groups of Directors of Adult Social Care in the West Midlands and of Principal Social Workers during this time. This reflects what we saw earlier, in relation to ADASS’ role the Pandemic Planning process where it was suggested that regional groupings of Directors of Adult Social Services could provide “mutual aid” in such a situation. In addition, Regional Assurance Leads

⁹⁰ Public Health England *Disparities in the risk and outcomes of COVID-19*. August 2020
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/908434/Disparities_in_the_risk_and_outcomes_of_COVID_August_2020_update.pdf

were established by the DHSC. These were recruited from senior ranks of the social care sector including, ex-CQC, Care Providers, ex-directors of Adult Social Care and Senior nurses to “act as a conduit between DHSC and local areas... provide opportunities for the sector to influence and inform DHSC as to the way in which current policies are working at local level.”⁹¹ The present Report does not focus specifically on the issue of whether the operation of easements has raised specific safeguarding issues. This is, however, the subject of a separate study on “Covid-19 and Adult Safeguarding” being undertaken for the Health Foundation by Dr Laura Pritchard-Jones at the University of Keele, with Dr Mark Eccleston-Turner, Professor Alison Brammer, and Ms Monique Mehmi.⁹²

In order to analyse the Authorities while at the same time maintaining the confidentiality of our interview respondents this Report begins by examining the approaches taken across the three categories of West Midlands Local Authorities:

- 1) Authorities which formally activated Stage 3 or Stage 4 easements;
- 2) “Stage 2” Authorities and the anomalous case of Dudley MBC; and
- 3) Authorities which stated that they did not implement easements but which did implement flexibilities within the pre-amendment Care Act provisions.

This analysis was undertaken with reference to documentary evidence available in the public domain, including Local Authority documents and the minutes of meetings, media coverage, and from FOI requests issued by advocacy groups and others. In the subsequent part of the Report we set out the reflections of those working in, and with, Local Authorities and other organisations supporting service users and care providers.

Local Authorities which implemented Stage 3 or Stage 4 Easemen

Each of the West Midlands Local Authorities that implemented formal Stage 3 or 4 easements did so very early in the pandemic. In very quick succession, all the local authorities “switched on” these easements. Then, in a matter of weeks, these same Local Authorities decided to “switch off” the easements within a similarly tight timeframe. For example:

Birmingham activated Stage 3 on 14/04/2020 and “cease use of the easements” on 18/05/20.

Coventry activated Stage 3 on 28/04/2020 and on 27/05/2020 reverted to Stage 2. On 02/06/2020 easements were revoked.

Solihull activated Stage 4 on 08/04/2020 and on 30/06/2020 “returned to full compliance with the Care Act 2014.”

Warwickshire activated Stage 3 on 09/04/2020 and reverted to Stage 2 on 23/05/2020.

⁹¹ S. Eldridge “Giving Assurances” published 25th June 2021. <https://socialcare.blog.gov.uk/2021/06/25/giving-assurances>.

⁹² <https://www.keele.ac.uk/research/researchnews/2020/november/impact-covid/adult-safeguarding.php>

Staffordshire activated Stage 3 on 09/04/20 and notified DHSC of cessation of Stage 3 on 27/05/20.⁹³

Rationales for Decisions to Utilise Higher-Level Easements

Rationales for the decision to activate higher-level easements varied from council to council. A further important factor here and another illustration of how social care decisions cannot be considered separately from the wider context of infection control is the way in which they interface with Public Health decisions that also impacted on the delivery of social care provision. As will be seen below, certain activities and aspects of service delivery may have been stopped as part of Care Act easements in some instances, while in others the decision to close day centres, for example, was made expressly to adhere with social distancing requirements under the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020.⁹⁴

BIRMINGHAM CITY COUNCIL

Birmingham City Council serves a large and diverse urban population. Its population in 2016 was 1,124,569, with a projected population by 2022 of 1.17 million.⁹⁵ The decision to activate easements was made under the Council's Emergency Plan,⁹⁶ operating under the Gold-Silver-Bronze Command model,⁹⁷ which – as elsewhere – incorporated Adult Services leaders, NHS leaders, LRF leaders, and other senior strategic leads from the emergency services. Birmingham's DASS, then Interim Chief Executive, Graeme Betts CBE, led the command structure throughout most of the pandemic.⁹⁸

Birmingham's decision to activate the easements almost immediately suggests a pre-emptive response, based primarily on concerns about hospital and staffing capacity. The city was chosen as the site for one of the emergency Nightingale hospitals, close to the boundary with neighbouring Solihull,⁹⁹ and this awareness appears to have hastened the pace of decision-

⁹³ <https://www.communitycare.co.uk/2020/05/21/two-councils-return-care-act-compliance-leaving-five-authorities-suspending-duties/>

⁹⁴ SI 350 (2020).

⁹⁵ https://www.birmingham.gov.uk/downloads/file/7854/birmingham_population_information_graphic

⁹⁶ <https://birmingham.cmis.uk.com/Birmingham/Document.ashx?czJKcaeAi5tUFL1DTL2UE4zNRBcoShgo=eqJN6loZGfqN7N3JlzkamwEJNQWwIxNrKJZNnB4YOqo%2FL%2FPneJYyHA%3D%3D&rUzwRPf%2BZ3zd4E7Ikn8Lyw%3D%3D=pwRE6AGJFLDNih225F5QMaQWctPHwdhUfCZ%2FLUQzgA2uL5jNRG4jdQ%3D%3D&mCTIbCubSfFxsDGW9IXnlg%3D%3D=hFfIUdN3100%3D&kCx1AnS9%2FpWZQ40DXFvdEw%3D%3D=hFfIUdN3100%3D&uJovDxwdjMPoYv%2BAJvYtyA%3D%3D=ctNJff55vVA%3D&FgPIIEJYlotS%2BYGoBi5oIA%3D%3D=NHdURQburHA%3D&d9QjI0ag1Pd993jsyOJqFvmyB7X0CSQK=ctNJff55vVA%3D&WGewmoAfeNR9xqBuxOr1Q8Za60lavYmz=ctNJff55vVA%3D&WGewmoAfeNQ16B2MHuCPMRKZMwaG1PaO=ctNJff55vVA%3D> Item nos. 77 and 78.

⁹⁷ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1013914/national-critical-incident-management-guidance-v13.0-ext.pdf; see also

https://www.birmingham.gov.uk/info/50192/birmingham_prepared/1854/what_happens_in_an_emergency/3

⁹⁸ <https://www.care-plus.org.uk/people/board/professor-graeme-betts-cbe>

⁹⁹ The hospital cost £65 million. "Birmingham Nightingale Hospital Closes without treating a single patient" Birmingham Mail 1st April 2021 <https://www.birminghammail.co.uk/news/midlands-news/birminghams->

making. It was reported that the Shadow Cabinet Member for Health and Social Care, Cllr Matt Bennett (Edgbaston, Con) said that

I have raised concerns with Councillor Hamilton about the use of these powers and have been assured that they are only being used to speed up discharge from hospital and ease the pressure on the NHS.

Whilst I can understand the intentions behind that, I am concerned about the increase in power and weakening of accountability that this entails. I have asked Cllr Hamilton for assurances on safeguards, to make sure that what starts out as a well-intentioned and pragmatic easing of bureaucracy doesn't end up as a cost cutting reduction of provision which could have a real impact on vulnerable people.

I am also concerned that **this decision, its scope and the rationale behind it has not been communicated to service users and other partners, despite this being a requirement.**{emphasis by Report authors}¹⁰⁰

The minutes of the meeting of 16th June indicated that these decisions were to be published on the Council's website by the end of June 2020.¹⁰¹

The reason why the decision was taken to consider the use of 'stage 3' Care Act easements was because there were pressures on the system i.e. increased demand and reduced capacity which meant there was a risk that adult social care would not be able to fulfil its duties. There was a culmination of factors including the rate of infection and number of deaths was increasing rapidly as was the number of patients needing intensive care and a need to free up capacity within hospitals. The Birmingham Nightingale Hospital was under construction and adult social care would be expected to support both the new hospital as well as increased demands elsewhere. Therefore, there was a need to temporarily streamline processes.¹⁰²

The decision was not subject to broader public consultation. Political concerns were raised, cross party, by Council Members as to how the process had been undertaken.¹⁰³ The Chair of the Health and Social Care Scrutiny committee, Councillor Rob Peacock, complained that he had not been informed of the decision.¹⁰⁴

The announcement released on the Council website emphasised that although higher level easements had been activated to facilitate "streamlining services" it would not impact upon existing services:

nightingale-hospital-closes-without-20300573; "Birmingham's Nightingale Hospital closes without seeing any patients" ITV News, 1st April 2021 <https://www.itv.com/news/central/2021-03-31/covid-birminghams-nightingale-hospital-closes-without-seeing-any-patients-coronavirus-nhs-matt-hancock>

¹⁰⁰ T. Dare "Concern for vulnerable as Birmingham no longer obliged to assess people over care needs, 28th April 2020 <https://www.birminghammail.co.uk/news/midlands-news/concern-vulnerable-birmingham-no-longer-18161706>

¹⁰¹ Health and Social Care Overview and Scrutiny Committee on Tuesday 16th June 2020.

<https://birmingham.cmis.uk.com/birmingham/Meetings/tabid/70/ctl/ViewMeetingPublic/mid/397/Meeting/1641/Committee/332/Default.aspx>

¹⁰² Ibid at page 4 re. "Care Act easements."

¹⁰³ Ibid at at page 51, see also <https://civico.net/index.php/birmingham/10334>.

¹⁰⁴ Meeting of the 29th May 2020.

On the 14 April the Acting Director of Adult Social Care took the decision to implement powers provided to Local Authorities in respect of their duties under the Care Act 2014 introduced by the Coronavirus Act 2020 which came into force on 31 March 2020. This meant that the local authority was streamlining processes under Care Act easement Stage 3.

This was not about cutting services and we continued to assess and provide services to those who had an eligible need for care and support. There was no change to the services received by existing service users as a result of this decision.¹⁰⁵

What then did these Stage 3 easements mean in practice? Professor Graeme Betts in the role of Gold Commander, in his Report to Cabinet on “Birmingham City Council’s response to COVID-19,” stated that

4.1.8 The only easements agreed during this period related to streamlining assessments, including not providing hard copies of assessments/support plans and limiting the choice of providers, in recognition of the limited options due to pressures in the care provider sector. This decision was informed by dialogue with health partners and was kept under regular review, with information available on the City Council’s website.¹⁰⁶

Yet the movement from use of Stage 3 easements was relatively rapid, just over a month after they were activated.

4.1.9 The directorate subsequently took the decision that, given that the peak of COVID-19 deaths and infections now appears to have passed, and capacity in the health and care system has improved, to cease use of the easements with effect from 18th May 2020. We are now in the process of revisiting the assessments undertaken during this period, alongside continuing our ongoing work with providers and partners to ensure that citizens receive the care and support that they need. The provisions in Coronavirus Act 2020 remain in place should the situation deteriorate.¹⁰⁷

Questions as to whether easements were resumed were asked by Councillor Peacock in November 2020. He asked

In the event that social care easement powers are used again during a future wave of the Covid pandemic, can you confirm you will adopt the practice of providing the assessors written record in whatever form to the service user and carer?

¹⁰⁵ https://www.birmingham.gov.uk/homepage/357/local_guidance_during_covid-19.

¹⁰⁶ Birmingham City Council’s response to COVID-19 Report of: Cabinet Report author: Professor Graeme Betts (Gold Commander March to May 2020 & Director, Adult Social Care.

<https://birmingham.cmis.uk.com/Birmingham/Document.ashx?czJKcaeAi5tUFL1DTL2UE4zNRBcoShgo=JDHiQZOuS9UZlpVAgTwn7%2fkn7zc87EgEFVikVV6pFEwXevDQyb85kw%3d%3d&rUzwrPf%2bZ3zd4E7lkn8Lyw%3d%3d=pwRE6AGJFLDNIh225F5QMaQWctPHwdhUfCZ%2fLUQzgA2uL5jNRG4jdQ%3d%3d&mCTIbCubSffXsDGW9IXnlg%3d%3d=jUgQCaU3L68%3d&kCx1AnS9%2fpWZQ40DXFvdEw%3d%3d=XGEW13%2bcES8%3d&uJovDxwdjMPoYv%2bAjvYtA%3d%3d=ctNJff55vVA%3d&FgPIIEJYlotS%2bYGoBi5oIA%3d%3d=NHdURQburHA%3d&d9QjjOag1Pd993jsyOJqFvmyB7X0CSQK=ctNJff55vVA%3d&WGewmoAfeNR9xqBux0r1Q8Za60lavYmz=ctNJff55vVA%3d&WGewmoAfeNQ16B2MHuCPMRKZMwaG1PaO=ctNJff55vVA%3d>

¹⁰⁷ Ibid.

The response was

We do not anticipate using the Care Act easement powers in the future. However, if this does become necessary, we would set out clearly the rationale for any changes and ensure that these are communicated to service users.¹⁰⁸

However this did not mean that services totally resumed in a pre-Covid mode at that point. Day centres are one illustration. These were closed during the initial period of the pandemic with alternative offerings of online provision and other provision such as “phone and online services, supply of meals, safe and well checks, home visits, support to carers, assistance with medical appointments and shopping deliveries.”¹⁰⁹ These closures extended through 2020 and into 2021 with the phased re-opening of day centres only began from 26th April 2021 11 months after the Stage 3 easements had ceased.¹¹⁰ Even by October 2021 the City Council website on its “Care Providers” page stated that

We are taking additional steps to ensure that care and support needs continue to be met for those citizens who are already in receipt of care in line with national guidance.

We are working closely with care providers to minimise the impact on citizen’s care and support. We would ask citizens to consider seeking support from their family, friends and local community networks where possible in the current unprecedented circumstances.

If staff shortages do occur in care provider services, they will prioritise those services to people for medication and safety reasons and we will take extra steps to assist them where possible.¹¹¹

Birmingham City Council’s capacity to support its communities and meet citizens’ needs was greatly bolstered by collaborative work in the voluntary sector. Birmingham Voluntary Services Council (BVSC) had been asked early on to refocus the existing Neighbourhood Networks programme across the city to form a #Covid19SupportBrum partnership with local voluntary sector organisations designated to sub-groups focused on working to support citizens, particularly those who draw on services.¹¹²

¹⁰⁸<https://birmingham.cmis.uk.com/birmingham/Document.ashx?czJKcaeAi5tUFL1DTL2UE4zNRBcoShgo=Lk3P8Lx89bkTMKqFvt8EZqTWbdrIzh9jZTY8QzzEs99kRMPXtU%2FNWQ%3D%3D&rUzwRPf%2BZ3zd4E7lkn8Lyw%3D%3D=pwRE6AGJFLDNIh225F5QMaQWctPHwdhUfCZ%2FLUQzgA2uL5jNRG4jdQ%3D%3D&mCTIbCubSFFXsDGW9IXnlG%3D%3D=hFflUdN3100%3D&kCx1AnS9%2FpWZQ40DXFvdEw%3D%3D=hFflUdN3100%3D&uJovDxwdjMPoYv%2BAJvYtY%3D%3D=ctNJff55vVA%3D&FgPIIEJYlotS%2BYGoBi5oIA%3D%3D=NhdURQburHA%3D&d9Qjj0ag1Pd993jsyOJqFvmyB7X0CSQK=ctNJff55vVA%3D&WGewmoAfeNR9xqBux0r1Q8Za60lavYmz=ctNJff55vVA%3D&WGewmoAfeNQ16B2MHuCPMRKZMwaG1PaO=ctNJff55vVA%3D>

¹⁰⁹Birmingham City Cabinet Meeting of the 13th October 2020 re. Impact on Day Centres
<https://birmingham.cmis.uk.com/Birmingham/Document.ashx?czJKcaeAi5tUFL1DTL2UE4zNRBcoShgo=y6nOLjho9fTCQHZgt6tQNSAGbDc3c4xyfk0d9tdxz%2fs4S107F4860g%3d%3d&rUzwRPf%2bZ3zd4E7lkn8Lyw%3d%3d=pwRE6AGJFLDNIh225F5QMaQWctPHwdhUfCZ%2fLUQzgA2uL5jNRG4jdQ%3d%3d&mCTIbCubSFFXsDGW9IXnlG%3d%3d=hFflUdN3100%3d&kCx1AnS9%2fpWZQ40DXFvdEw%3d%3d=hFflUdN3100%3d&uJovDxwdjMPoYv%2bAJvYtY%3d%3d=ctNJff55vVA%3d&FgPIIEJYlotS%2bYGoBi5oIA%3d%3d=NhdURQburHA%3d&d9Qjj0ag1Pd993jsyOJqFvmyB7X0CSQK=ctNJff55vVA%3d&WGewmoAfeNR9xqBux0r1Q8Za60lavYmz=ctNJff55vVA%3d&WGewmoAfeNQ16B2MHuCPMRKZMwaG1PaO=ctNJff55vVA%3d>

¹¹⁰ https://www.birmingham.gov.uk/info/50231/coronavirus_covid-19/2088/adult_social_care_updates/6

¹¹¹ https://www.birmingham.gov.uk/info/50231/coronavirus_covid-19/2088/adult_social_care_updates/2

¹¹²<https://birmingham.cmis.uk.com/Birmingham/Document.ashx?czJKcaeAi5tUFL1DTL2UE4zNRBcoShgo=267a1zglGxp4dbt7OKr0CuOHow9lKkT%2bRzpolDYKC1nKx2DIHqVYw%3d%3d&rUzwRPf%2bZ3zd4E7lkn8Lyw%3d%3d>

COVENTRY CITY COUNCIL

Coventry is another substantial urban centre, with diverse communities. It has an estimated population of 371,521.¹¹³ The City Council initially indicated that it was operating under Stage 2 “flexibilities”, but then stated that it was moving to formal Stage 3 easements from 24th April 2020. A document signed by the Chief Executive of the City Council states that

I am informed however that, following discussion with the Adult Social Services Senior Management Board, the Lead Member and local NHS Leadership, the Director of Adult Social Services and the Principal Social Worker are satisfied that it is now necessary to move to operating under the Care Act Easements.¹¹⁴

The Council produced a brief guide to the easements a ‘One Minute Guide’ explaining easements in straightforward language.¹¹⁵ In response to a FOI request, it was stated on May 28th 2020 that “The decision has been published on the Council’s webpages and a stakeholder communication and engagement plan enacted.”¹¹⁶

It was expressly confirmed on 28th May 2020 in response to a further Freedom of Information request that

Coventry City Council is not operating at Stage 4, or reprioritising services and therefore are not acting in such a way as to risk breaching an individual’s human rights.¹¹⁷

It was also confirmed that service users and their families and carers, service providers, advocacy organisations and the voluntary sector were informed on 28th April 2020.¹¹⁸ It appears that a full Equality Impact Assessment had not been undertaken, in response to an FOI it was stated that

[d=pwRE6AGJFLDNlh225F5QMaQWcPHwdhUfCZ%2fLUQzgA2uL5jNRG4jdQ%3d%3d&mCTIbCubSFfXsDGW9IXnl g%3d%3d=hFflUdN3100%3d&kCx1AnS9%2fpWZQ40DXFvdEw%3d%3d=hFflUdN3100%3d&uJovDxwdjMPoYv%2 bAJvYtyA%3d%3d=ctNJff55vVA%3d&FgPIIEJYlotS%2bYGoBi5oIA%3d%3d=NHdURQburHA%3d&d9QjjOag1Pd99 3jsyOJqFvmyB7X0CSQK=ctNJff55vVA%3d&WGewmoAfeNR9xqBux0r1Q8Za60lavYmz=ctNJff55vVA%3d&WGew moAfeNQ16B2MHuCPMRKZMwaG1PaO=ctNJff55vVA%3d](https://www.coventry.gov.uk/download/downloads/id/32628/one_minute_guide_-_care_act_easement.pdf) at 5.1.3; and <https://www.bvsc.org/cd-community-based-responses-to-covid-19-in-birmingham-insights-and-experiences>

¹¹³ Coventry Adult Social Care Annual Report and Key Areas of Improvement 2019/20 (Local Account) U:/Adult_Social_Care_Annual_Report_2019_20.pdf

¹¹⁴ “Exercise of emergency functions – Use of the Care Act Easements, created under the Coronavirus Act 2020” <https://edemocracy.coventry.gov.uk/documents/s47013/Exercise%20of%20Emergency%20Functions%20-%20Care%20Act%20Easements.pdf>

¹¹⁵ https://www.coventry.gov.uk/download/downloads/id/32628/one_minute_guide_-_care_act_easement.pdf

¹¹⁶ Freedom of Information Act 2000 (FOIA) Request ID: REQ07114 dated 28th May 2020. <https://www.coventry.gov.uk/downloads/file/33097/req07114>

¹¹⁷ Ibid.

¹¹⁸ Ibid.

3. Any human rights assessment of the impact of the decision

A human rights assessment of the impact was not required as we were still able to undertake our assessments, eligibility decisions and support plans remotely using telephony and trusted assessor approaches however the usual level of detail could not be maintained and our ability to operate in a strength-based way was potentially reduced. We were not at any time operating at stage 4, reprioritising services and therefore are not acting in such a way as to risk breaching an individual's human rights.

4. Any Equality Impact Assessment or equalities analysis of the decision As Q3. ¹¹⁹

On 29th May, Coventry's DASS, Pete Fahy, emailed the DHSC to state that "Coventry has moved back to level 2 and are therefore operating again under Care Act 'normal.'" ¹²⁰ The wording of the email is somewhat perplexing, however, as Stage 2 does not constitute "normal" under the Care Act easement Guidance. Four days later, a document signed by the Chief Executive of Coventry Council, Martin Reeves, stated that it was no longer necessary to implement easements. ¹²¹ The rationale for the easements and decision to move down to Stage 2 was further set out in a document published following a further FOI request to the Council on 1st June 2020:

2.3. Adult Services have continued to monitor data and intelligence to inform decision making on Care Act Easements and a review on 13th May 2020 identified we will no longer be using Care Act Easements for our financial assessments. Assessments are being undertaken remotely and via our online assessment tool, this is happening without any delay and is now 'business as usual'

2.4. A further review on 27th May 2020 identified that it does not appear to warrant operating at this time under Stage 3 of the Care Act easements guidance due to no significant workforce depletion, rise in demand and/or market pressures

Evidence has identified;

- Activity on discharge pathways is comparable to same time period last year
- Waiting list activity and demand is being managed successfully
- Telephony and remote assessments are being undertaken using video conferencing, emergency reviews being undertaken and some scheduled reviews have commenced
- Enhanced and detailed risk assessments are in place to enable face to face assessments to be undertaken as required
- Our internal workforce remains stable and absence is relatively low with staff continuing to return from self-isolating and sickness absences.
- Evidence of increasing market capacity and reducing sickness levels
- PPE supply remains stable and is no longer a critical issue

3. Recommendation and Summary

3.1. Therefore, the recommendation to the Director of Adult Services is that we move from Stage 3 and operate under the 'pre-amendment Care Act' including continuing to only take Stage 2 actions to suspend certain services such as Day Opportunities and Travel Training

¹¹⁹ <https://www.coventry.gov.uk/download/downloads/id/33059/req07144.pdf>

¹²⁰ FOI. <https://www.coventry.gov.uk/download/downloads/id/33059/req07144.pdf>

¹²¹ Document signed by Chief Executive Coventry City Council on 2nd June 2020 "Exercise of emergency functions – Use of the Care Act Easements, created under the Coronavirus Act 2020".

<https://edemocracy.coventry.gov.uk/documents/s47296/11%20-%20Exercise%20of%20Emergency%20Powers%20-%20Care%20Act%20Easements.pdf>

but retain the ability to use easements in the future as required due to any subsequent workforce depletion and/or surge in demand.¹²²

Here there is reference to operating under the “pre-Amendment Care Act” but then indicating that they will be undertaking certain actions at Stage 2. In fact, under the Care Act easement Guidance, Stage 2 refers to the operation of “flexibilities”.

Further information regarding the nature of the easements operational in Coventry was provided in a report made by Pete Fahy on 27th July 2020 to a meeting of the Coventry Health and Well-being Board, which states that

6.1 The ability to ease some of the local authorities’ duties under the Care Act 2014 were introduced through the Coronavirus Act 2020. The duties that could be eased were in four areas as follows:

- a) The requirement to carry out detailed assessments of people’s care and support needs. However, we were still expected to respond as soon as possible to requests for care and support.
- b) The requirement to carry out financial assessments.
- c) The requirement to prepare or review care and support plans in line with the pre amendment Care Act provisions. Authorities activating the easements were still expected to carry out proportionate, person-centred care planning which provides sufficient information to all concerned.
- d) The duties on local authorities to meet eligible care and support needs, or the support needs of a carer, was replaced with a power to meet needs. The replacement of a duty with a power enabled local authorities to prioritise the most pressing needs...

6.3 The easements that primary used [sic] were easements 1 and 3. These enabled Adult Social Care to operate within the appropriate legal framework taking into account national guidance on minimising contact and social distancing. Easement 2 was activated for a short period but not used. This was because the financial assessments team were able to maintain delivery of services at pre pandemic levels through the use of a digital assessment tool and remote communication via MS Teams. Between 30-35 financial assessments were undertaken a week during the pandemic which is in line with pre Covid rates. Although activated Easement 4 was not applied to its full extent in respect of prioritising some people with care and support needs above others.¹²³

Although this asserts that “Easement 2” – presumably in reference to “Stage 2” under the Guidance – was briefly activated apparently as a precautionary measure, the types of “flexibilities” typically associated with Stage 2 were in fact operational, as those services could be delivered remotely rather than face-to-face as they would be under “Stage 1: Business as Usual”. But there is also a somewhat confusing reference to “Easement 4”. Although unclear,

¹²² Adult Social Care Care Act Decision Report - Care Act Easements Date: 27th May 2020 From: Andrew Errington Adults Principal Social Worker, Sally Caren Head of Social Work, Mental Health and Sustainability To: Pete Fahy – Director of Adult Services; document disclosed under FOI request <file:///U:/1-6-20%20-%20Coventry%20-%20FOI%20Response.pdf>

¹²³ Report To: Coventry Health and Wellbeing Board Date: 27 July 2020 , From: Pete Fahy, Director of Adult Services; Title: Adult Social Care – Key programmes of work to support Covid-19 to date; <file:///U:/27-7-20%20-%20Coventry%20-%20Public%20reports%20pack%20Coventry%20Health%20and%20Well-being%20Board.pdf>

this may perhaps suggest that some degree of prioritisation of care and support needs was undertaken.

As with other easement Authorities there is recognition of the impact of FOI requests. It was stated that

6.4 For Local Authorities that activated the easements, Coventry included, there was a significant amount of scrutiny and challenge from national organisations and law firms. It is worth noting that none were able to identify any individual who has suffered detriment as a result of the easements and no complaints or challenges were made locally in this respect.¹²⁴

He notes that social work colleagues worked with those in the NHS in “freeing up a significant number of hospital beds in the early stages of the Pandemic.”¹²⁵ He then goes on to make statements concerning future service delivery, noting that

9.3.1 It is a point of fact that the vast majority of Adult Social Care has remained operational. The way we have done things has changed to be much more reliant on technology and remote working as opposed to face to face work but we have largely continued to operate. Wherever possible this will continue but flexibility and balancing risk will be the underpinning principles of how we progress. For some people with care and support needs and family carers the remote working approach has been extremely effective but for others it has not been as successful and as always Adult Social Care will not be a one size fits all service as we progress.

9.3.2 Where services did temporarily cease, including day opportunities, residential respite provision and travel training work is underway to bring these back where possible and in a Covid-19 compliant way. This includes supporting independent sector providers to reinstate services safely as well as restarting City Council provision.¹²⁶

In January 2021 in his Report to the Meeting of Coventry Health and Wellbeing Board Pete Fahy stated that

Following wave one services were re-opened or reinstated to wherever this could be done in a Covid compliant way, with the necessary infection prevention and control measures in place. Care Act easements had not been required beyond the first wave of the pandemic.¹²⁷

He also commented that “Adult Social Care operations have been and continue to be significantly impacted in a number of key areas.”¹²⁸ He noted that support was provided by the Commissioning Team to the external provider market. While there have been “numerous

¹²⁴ Ibid.

¹²⁵ Ibid. at para 8.1.

¹²⁶ Ibid. Nb. Travel training is defined by Coventry as “Independent Travel Training (ITT) provides people with the knowledge and skills they need to travel independently, whilst providing parents and carers with peace of mind that people are travelling safely.” See https://www.coventry.gov.uk/info/77/getting_out_and_about/1465/independent_travel_training

¹²⁷ Report to Coventry Health and Wellbeing Board Date: 25 January 2021 From: Pete Fahy, Director Adult Services Title: COVID-19 – The impact on Adult Social Care.

<https://edemocracy.coventry.gov.uk/documents/s49280/The%20Impact%20on%20Adult%20Social%20Care.pdf> para 3.1.2.

¹²⁸ Ibid, at para 3.1.3.

challenges throughout the pandemic to date there has only been one case of provider failure and this was not due to COVID-19.”¹²⁹

3.1.5 Maintaining Day Services and providing respite and carer support wherever possible has required changes to operating processes and reductions in numbers of those people accessing services to enable safe practices. The City Council has funded additional support for unpaid carers in order to help to sustain this resource and prevent carer breakdown and the need for formal support service provision.¹³⁰

It was noted that by the start of December 2020, there was significant, growing pressure on the social care team at University Hospital Coventry and Warwickshire undertaking speedy discharge on a 7-day a week basis,¹³¹ leading to a 40% increase in the work of the Hospital Social Worker Team.¹³²

As we progress through the current stage of the pandemic Adult Social Care resources will be diverted as appropriate to support health colleagues in dealing with the unprecedented demands. This will inevitably mean focus on other, less critical but important, activity such as enablement and therapy will be impacted.

Community Social Work:

Adult Social Care front door demand initially saw a gradual decline in completed contact assessments (referrals), since the first wave of the pandemic in 2020. The number of ‘involvements’, anyone requesting support is broadly similar to pre COVID-19... Social Work staff continue to work from home and do as many of their duties from home as possible and only undertake face to face assessments where necessary using appropriate PPE and safety measures.¹³³

However there is some suggestion at least that some users of services were impacted,¹³⁴ but there was no comprehensive review to date. In terms of day services, the Women’s Budget Group Covid-19 Report states that

Across our day opportunities services for people with Learning Disabilities, we implemented a creative timetable of ‘virtual activities’. The staff teams worked very hard to develop these sessions and hosted them live on Microsoft Teams so that service users who could not return (due to social distancing restrictions at the time of the Annual Report) were able to be involved, see and interact with their friends.¹³⁵

While, as we have seen above, some social work capacity was diverted in the latter part of 2020 to support the NHS; however, it is not clear how this may have impacted on the provision

¹²⁹ Ibid at para 3.1.4

¹³⁰ Ibid.

¹³¹ Ibid at para 3.1.7.

¹³² Ibid at para 3.1.8.

¹³³ Ibid. at paras 3.1.8 and 3.1.9.

¹³⁴ Women’s Budget Group COVID-19 Report, the Impact on Women in Coventry at page 21

<https://wbg.org.uk/wp-content/uploads/2020/07/Covid-19-report-The-impact-on-women-in-Coventry.pdf>

¹³⁵ Coventry Our Key Achievements Adult Social Care Annual Report and Key Areas of Improvement 2020/21 (Local Account) at page 49.

<https://edemocracy.coventry.gov.uk/documents/g12463/Public%20reports%20pack%2029th-Sep-2021%2010.00%20Health%20and%20Social%20Care%20Scrutiny%20Board%205.pdf?T=10>

of other social care services during this time. By the end of 2020, practice had not returned to pre-pandemic models, with social workers continuing to work from home and face-to-face assessments only undertaken “where necessary”.

SOLIHULL METROPOLITAN BOROUGH COUNCIL

Solihull is a broadly affluent borough in both the regional and national context, characterised by above-average levels of income and home ownership, and only limited pockets of socio-economic deprivation. As of 2019, it had a population of approximately 214,909 people, with a notable rise in the number of older citizens.¹³⁶ It was the only West Midlands Local Authority which formally notified the operation of Stage 4 easements to the DHSC. Solihull’s decision-making process was very clearly documented through council committee minutes, including recordings of online meetings, and related documentation. It is notable that this decision is viewed in terms of the collective involvement of a larger “team”. The decision was published on the council website. Although this is a decision for Local Authority officers there appears to be clear engagement with the importance of political buy-in:

The paper was shared with opposition spokespeople for comment before the CPH [Cabinet Portfolio Holder] decision which was on the 6 April. Opposition Spokespeople comments (where made) were published. The CPH decision papers were also shared with Health and Wellbeing Board members and local NHS leaders. Confirmation of the easements has also been circulated around Solihull Safeguarding Adult Board members.¹³⁷

The recommendation to move to Stage 4 was presented at the CPH Adult Social Care and Health Decision Session on 6th April 2020. It was stated that this decision related to services experiencing pressures which included:

90% of calls coming through the Adult Care and Support Front Door related to Covid-19 impact. There is an increased demand to support people with issues that would not usually be in the remit of Adult Care and Support. This has included having to signpost members of the public to Government guidance, accessing support through operation shield, enabling people to access essential supplies including money and food, and a large volume of queries relating to Personal Protective Equipment.

There is significant additional work associated with shielding and protecting those who are deemed as extremely vulnerable to the impact of Covid-19 on medical grounds which relates

¹³⁶ https://www.solihull.gov.uk/sites/default/files/migrated/InfoandIntelligence_Solihull-People-Place.pdf at pages 1-2

¹³⁷ Meeting of 15 June 2020 Report to: Health and Adult Social Care Scrutiny Board. Care Act Easements Report from: Jenny Wood, Director: Adult Care and Support Karen Murphy, Assistant Director: Adult Care and Support Lizzie Edwards, Acting Assistant Director: Adult Care and Support Beth Hutchinson, Principal Social Worker: Adult Care and Support; Report author/lead contact officer: Safina Mistry, Strategic Commissioner Safina Mistry, Beth Hutchinson, Principal Social Worker: Adult Care and Support, Laura Harwood, Acting Governance Lead: Adult Care and Support at para 3.8.

<https://eservices.solihull.gov.uk/mginternet/documents/s81423/Care%20Act%20Easements%20Report.pdf>

to those who are advised to rigorously follow shielding measures. For context, the most recent list sent through on 2nd April 2020 contained over 3000 people.¹³⁸

Staffing had been adversely hit; for example, some 25% of Adult Care and Support SMBC staff were on sick leave. A further 10% of other staff were self-isolating due to potentially having Covid-19. Some staff were on compassionate leave due to Covid-19 related bereavement. Issues around staffing problems due to sickness and self-isolation were also felt in the Contact Centre. The consequence of working at home where possible had led to assessments taking double the amount of time due to issues with information gathering.¹³⁹ There were extended working hours due to acting as part of the Covid -19 hospital discharge process and self-funder D2A pathways.

In line with the Care Act Easements guidance, operational teams have been mapping all existing known community packages for complexity and need and risk rating in order to establish the high priority cases for action and potential low priority cases for potential easement of Care Act duties. This is part of the approach recommended in national guidance but has impacted on usual service delivery and added to the backlog of work to be completed.¹⁴⁰

Other factors included challenges facing providers, such as impact on care home staff due to sickness, self-isolation, some resignations due to Covid-19 risks, and recruitment problems, as well as the number of hospital discharge individuals with “more complex needs” requiring community care. It was also noted that PPE supply chain issues were impacting on provision of care, which therefore needed “consideration and prioritisation.”¹⁴¹ Indeed PPE was a particular focus of queries for a new “seven day week commissioning desk” which was

dealing with the brokerage function, linking people with care needs to available services, and supporting providers impacted by staff shortages, PPE shortfalls and obtaining infection control advice from Public Health. Over 85% of calls to the Commissioning Duty function relate to Covid-19 and this is new demand which is not normally present. There is increased demand to support providers with a range of issues directly related to Covid-19.¹⁴²

It was noted that

3.4. The main impacts of implementing easements on direct support have been changes to day opportunities access and changes to support for some people receiving low-level care and support.

Changes to services of this sort highlight the interface between closing to support social distancing and staffing capacity impacting on alternative provision of services:

¹³⁸ <https://eservices.solihull.gov.uk/mginternet/documents/b26089/Full%20pack%2006th-Apr-2020%2010.00%20CPH%20Adult%20Social%20Care%20and%20Health%20Decision%20Session.pdf?T=9> at page 11.

¹³⁹ <https://eservices.solihull.gov.uk/mginternet/documents/b26089/Full%20pack%2006thApr2020%2010.00%20CPH%20Adult%20Social%20Care%20and%20Health%20Decision%20Session.pdf?T=9>

¹⁴⁰ Ibid.

¹⁴¹ Ibid.

¹⁴² Ibid at para 2.

The internal day care centres were closed because of social distancing requirements under the social distancing regulations (The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020). However, we have been unable to provide alternative day opportunities for everyone due to staffing capacity impacted by Covid-19.¹⁴³

Solihull provided information regarding the operational changes to service provision on its website. However, in referring to these changes, it did not make use of the term “easements”. In relation to “Equality Implications” it is stated that “The duties outlined in the Equality Act 2010 remain in place.”¹⁴⁴ However, it does not appear that a full Equality Impact Assessment was undertaken.

At the meeting of the Health and Adult Social Care Scrutiny Board on 15th June 2020 Mr Nick Stephens asked:

How many people had their Care Packages suspended or reduced in Solihull as a result of the authority going to stage 4 of Care Act Easements?

The Director for Public Health and the Director for Adult Social Care provided the following responses:

As outlined in the report, all decisions were taken on an individual basis. Care was reduced or suspended where individuals had alternatives available. This was in order to free up home care hours that were needed for urgent situations, due to a depleted workforce. As previously publicly reported, there have been 41 people who had their home care reduced or suspended. All of these people have now been offered the return of their original home care hours.¹⁴⁵

By 30th June 2020, Solihull Council was reporting that it had returned to full compliance with the Care Act 2014.¹⁴⁶

WARWICKSHIRE COUNTY COUNCIL

Warwickshire County Council is a medium-sized Local Authority serving approximately 583,786 citizens across a mixture of historic towns and large rural areas.¹⁴⁷ The decision to implement Stage 3 easements was signed on 9th April 2020 by the DASS, Nigel Minns.¹⁴⁸ The

¹⁴³ Meeting date: 15 June 2020 Report to: Health and Adult Social Care Scrutiny Board Subject/report title: Care Act Easements Report from: Jenny Wood, Director: Adult Care and Support Karen Murphy, Assistant Director: Adult Care and Support Lizzie Edwards, Acting Assistant Director: Adult Care and Support Beth Hutchinson, Principal Social Worker: Adult Care and Support ; Report author/lead contact officer: Safina Mistry, Strategic Commissioner Safina.Mistry, Beth Hutchinson, Principal Social Worker: Adult Care, Laura Harwood, Acting Governance Lead: Adult Care and Support, at para 9/14., <https://eservices.solihull.gov.uk/mginternet/mgConvert2PDF.aspx?ID=82004>.

¹⁴⁴ Ibid.

¹⁴⁵ <https://eservices.solihull.gov.uk/mginternet/mgConvert2PDF.aspx?ID=82004>

¹⁴⁶ <https://www.solihull.gov.uk/news/ArtMID/820/ArticleID/2924/How-Covid-19-is-affecting-care-and-support-for-adults>

¹⁴⁷ <https://data.warwickshire.gov.uk/>

¹⁴⁸ Officer Key Decision made under the Council’s Urgency Procedure by the Strategic Director for People on 9th April 2020: Coronavirus COVID-19: Care Act Easements

governance structure utilised in making the decision to activate the easements is clearly stated, noting that there were discussions with “local NHS leadership”, including the local CCGs which endorsed them, and that the decision was also supported by the Principal Social Worker, Ian Redfern, who was to monitor their use.¹⁴⁹ It also stated that the Portfolio Holder for Adult Social Care and Health and Chair of the Health and Wellbeing Board, Councillor Caborn, had been “briefed” and had supported the actions taken. Opposition leads were briefed as were the chair and spokespersons from all parties on the Adult Social Care and Health Overview and Scrutiny Committee.¹⁵⁰

The Care Act easements were also discussed at the meetings of Warwickshire Joint Commissioning Board on 2nd April 2020, and the System Provider Support Group on 3rd April 2020.¹⁵¹ It is notable that the decision to not undertake face-to-face activity in order to reduce the risk of spreading disease is expressly included in the easement decision, thus highlighting once more the interface with social distancing Guidance.

1. Reduced (COVID-19) assessment process and suspension of reviews.

There is insufficient capacity to maintain normal Care Act assessments and reviews across all teams at the current time due to:

Staff absence – currently around one quarter of staff are absent through sickness, self-isolation or other reasons and this is projected to rise;

Home working, the need to protect staff with underlying conditions and restrictions on visits have further reduced the capacity of the workforce:

A requirement to support the Coronavirus COVID-19 hospital discharge pathway has led to a significant rise in demand with further increases predicted;

The NHS, private providers and all other agencies having reduced capacity which further impacts on our work; and

The Council will also need to maintain the usual contact and triage arrangements for people in the community.

Therefore, in enacting the easement we will introduce a COVID-19 assessment process.

The COVID-19 assessment process would involve a short assessment, which would capture just enough information, based on the Care Act domains, to make a decision about the individual’s care and support needs and the most appropriate response. This would avoid introducing delays into the COVID-19 hospital discharge pathway and allow best use to be made of social work capacity. The majority of assessments would be completed remotely in order to reduce the risk of spreading infection and would consider the needs and wishes of customers and their families and carers wherever possible.

<https://democracy.warwickshire.gov.uk/documents/s5784/Urgent%20Officer%20Key%20Decision%20Care%20Act%20Easements%209%20April%202020.pdf>

¹⁴⁹ Ibid.

¹⁵⁰ Response to FOI request on 2nd September 2020.

¹⁵¹ Ibid.

Planned Care Act reviews would be suspended, whilst unplanned reviews, would be treated as new assessments using the COVID-19 assessment pathway.

Support plans would include the minimum level of detail so that providers can safely provide the commissioned care.

Individuals who require new packages of care and support would be referred to brokerage in the usual way, along with a brief care and support plan that would include sufficient information for providers to understand the care required. A Care Act compliant assessment and support plan along with a financial assessment would be completed at the first opportunity following the conclusion of the coronavirus COVID-19 epidemic.

People will be notified that the care and support they receive at the current time may not be provided in the future or may be provided in a different way. They will also be given information about care charges and advised that they will receive a financial assessment further down the line and, based on the outcome of that, may be charged retrospectively for the care and support they receive during this period.¹⁵²

The document then considers “Prioritising care and support for those with most pressing needs”- a key aspect of Stage 3 easements. It notes the pressures upon hospital discharge work, including on care providers “most of whom also have contracts with the Council to provide social care and support.”¹⁵³ Similar pressures were noted on domiciliary care providers who were using “business continuity processes.”

Even with the mitigation in place, the increased levels of demand combined with the reduction in staff capacity available mean it is not possible to continue to meet the needs of all existing and new customers in line with normal practice under the Care Act.

Individuals who are assessed as being able to manage without formal care and support using the easements allowed during the COVID-19 epidemic would be referred for support from the voluntary and community sector. They would be contacted at the at the first available opportunity following the conclusion of the coronavirus COVID-19 epidemic to determine whether they would wish to proceed to a Care Act compliant assessment.

New and existing customers, who can manage without regulated care for a short period, may be referred for support from the voluntary and community sector. They would be contacted at the at the first opportunity following the conclusion of the coronavirus COVID-19 epidemic to determine whether they still wish to proceed to a Care Act compliant assessment The statement also indicated what would happen were Stage 4 easements to be implemented namely that the actions would be reviewed every two weeks.¹⁵⁴

The statement also indicated what would happen were Stage 4 easements to be implemented namely that the actions would be reviewed every two weeks. It was noted that there had been certain steps to mitigate the impact of easements before they were

¹⁵²<https://democracy.warwickshire.gov.uk/documents/s5784/Urgent%20Officer%20Key%20Decision%20Care%20Act%20Easements%209%20April%202020.pdf>

¹⁵³ Ibid.

¹⁵⁴ Ibid.

implemented. These included redeployment of social care staff to acute hospitals supporting patient discharge decision – making and annual leave was “managed”. Due to technological changes staff were able to undertake work at home. Project work concerning change and performance had stopped. There was daily review of staffing measures and of demand by service managers and the Assistant Director Adult Social Care.¹⁵⁵

Here staff absences are seen as a key factor, not simply in the Council itself but more generally.

Given levels of staff absence within the Council, NHS partners and WCC commissioned services, it is necessary start operating easements at stages 3 and 4 immediately.¹⁵⁶

The decision note highlights the impact of the “substantial increase in hospital discharge work and the timescales for securing discharge support are measured in hours,”¹⁵⁷ thus creating additional demands on providers of home and residential care. There were also impact on domiciliary care providers through the absence of staff:

They therefore need the ability to triage and refocus the capacity they have, and adult social care staff need to be able to commission support targeted on those most in need.¹⁵⁸

The decision note is also accompanied by an Appendix explaining how the decision was assessed against the Ethical Framework with a detailed table demonstrating analysis of the decisions against the criteria, as well as a R-A-G rated Equality Impact Initial Screening Template.¹⁵⁹ External communications were considered, including a public statement, with a simple explanation of the easement stages and which services might be impacted by the easements, posted on the council website.¹⁶⁰

Brief minutes of Easement Review meetings involving key decision-makers, Nigel Minns (Strategic Director, People), Pete Sidgwick (Assistant Director) and Ian Redfern (Principal Social Worker), were published via a FOI response. The first of these, dated 5th May 2020, recorded that:

Staffing Levels

Attendance is now at a good level – 4.9%. Not all staff able to undertake all tasks if they have underlying conditions but not significant numbers.

Provision of support.

Market is meeting demand and able to respond to take on new work. Some evidence that this may take longer when looking for care home placements. The ability of providers to admit varies frequently depending on their status. Care has so far been found but choice restricted.

Demand

¹⁵⁵ Ibid.

¹⁵⁶ Ibid.

¹⁵⁷ Ibid.

¹⁵⁸ Ibid.

¹⁵⁹ Appendix: analysis of recommendations against the COVID-19 Ethical Framework for Adult Social Care

¹⁶⁰ <https://www.warwickshire.gov.uk/information-coronavirus/coronavirus-care-act-easements/1>

Some aspects of work are taking longer (so increased time creates pressure not just numbers) telephone assessments, triangulation of information etc. Operational managers reporting that their teams are managing current demand. They no longer have wait lists which has enabled us to make sure current care needs are met. EDT has had significant increased adult demand – they continue to focus on making safe rather than doing more detailed Care Act work.

Use of easements

Residential review workers are still redeployed and supporting other teams so we are not undertaking these planned reviews. Other teams are doing planned reviews when they have capacity. Pressure at Team Leader level and Operations Manager level.

Future

There is stored demand with NHS hospital discharge cases that will need picking up – work has only just started on these cases. NHS locally is considering recommencing activity. We anticipate an upturn as people make contact again as restrictions are lifted. We need to go back to people where we/they have deferred non-urgent work due to risk of infection. We need to go back to people where the lack of group and community activity has meant we could not make these arrangements.¹⁶¹

The easements were subsequently “stood down”. A further Easement Review meeting was undertaken on 22nd May 2020.¹⁶² This indicated that staffing levels showed a good level of attendance, with the market meeting demand, and with no increased demand (though this was projected to rise in coming months). It was stressed that, while certain pressures and uncertainties remained, they were now able to move to Stage 2 (flexibilities), following the directives in the Guidance, and also informing the CQC:

Uncertainty remains but we can move to stage 2.

If some of the future demand and/or second wave occurs, we will need to consider moving back to stage 3.

Nigel {Nigel Minns, DASS} will brief members, inform DHSC and CQC.

Ian {Ian Redfern, PSW} will change information on website and staff guidance.¹⁶³

In a response to a further FOI request on 1st October 2020, it was confirmed that in the period 01/03/2020 and 29/05/2020 no one had been refused an assessment face-to-face or remotely due to lack of capacity due to the pandemic.¹⁶⁴ Warwickshire thus appeared to engage effectively with the easement Guidance.

STAFFORDSHIRE COUNTY COUNCIL

¹⁶¹ Easement Review Meeting, 5th May 2020, Minutes made available via FOI no.6121208.

¹⁶² Easement Review Meeting, 22nd May 2020, Minutes made available via FOI no

¹⁶³ Ibid.

¹⁶⁴ FOI request dated 1st October 2020.

Staffordshire County Council provides services for approximately 870,800 citizens across a relatively affluent, largely rural area, with some notable pockets of high deprivation.¹⁶⁵ The Council decided to move into Stage 3 easements on 9th April 2020. It was stated that

One of the Council's strategic objectives for management of the immediate impact of the coronavirus COVID-19 epidemic is to: ensure sustainability of adult social care during the coronavirus COVID-19 epidemic, and that planning and actions to sustain adult social care link with planning and actions in the NHS. This is against a backdrop of increasing demand and reducing capacity due to staff absence as a result of sickness and self-isolation.¹⁶⁶

The decision stated that approval had been given by the Council Leader and Deputy Leader, who was also the Cabinet Member for Health Care and Wellbeing Board, along with the Director of Adult Services and the Principal Social Worker.¹⁶⁷ A statement from the Deputy Leader indicated that the activation of easements was pre-emptive and precautionary, with an initial intention to use "flexibilities," presumably at Stage 2:

We have taken the decision to use these flexibilities if we have to – but we will only use them where absolutely necessary. This will enable us to maintain care for people at higher risk. This is us thinking ahead and planning to use the Care Act easements if and when they are needed, rather than whole scale implementation at this stage. This means that if we do have to use them we can do so in a managed way.¹⁶⁸

The recommendation to implement easements had been discussed with "local NHS leadership including the Clinical Commissioning Groups"¹⁶⁹ and that the co-chairs of the Health and Wellbeing Board and Healthwatch had also been informed of the position.¹⁷⁰ It stated that the following easements would be implemented:

- a) Introduce the COVID-19 assessment process.
- b) Suspend routine Care Act reviews.
- c) Triage new referrals, and broker home care for high and medium risk individuals, with home care for low risk individuals to be deferred if required.
- d) Work with home care providers to triage existing home care packages, continue care for high and medium risk individuals, and suspend care for low risk individuals if required.
- e) Put in place a system of welfare checks for low risk individuals for whom home care has been deferred or suspended.
- f) That the Council review these recommendations every two weeks with the Principal Social Worker and seek to restore Care Act complaint services as soon as is reasonably possible.¹⁷¹

¹⁶⁵ <https://www.staffordshire.gov.uk/Care-for-all-ages/Information-for-providers/Market-Intelligence/Market-position-statement-intelligence/Staffordshire-Evidence-Base-Population-Demographics-and-Adult-Social-Care-Needs.pdf>

¹⁶⁶ Executive Officer Delegated Decision Form Decision Title: Coronavirus COVID-19: implementation of Care Act easements Decision Date 09/04/2020.

¹⁶⁷ Ibid at para 28.

¹⁶⁸ Statement 23rd April 2020. <https://www.staffordshire.gov.uk/Newsroom/Articles/2020/04-April/Statement-on-Care-Act-easements.aspx>

¹⁶⁹ Note 166 supra at para 29.

¹⁷⁰ Ibid at para 30.

¹⁷¹ Staffordshire County Council Coronavirus/COVID19 Update. "This briefing summarises the National and Regional COVID-19 situation, and a summary of key response and recovery activity undertaken by the county

The council's response to an FOI request from Liberty on 27th April 2020 contains an email dated 2nd April 2020 from DASS Dr Richard Harling to Dr Alison Bradley, Clinical Chair of North Staffordshire CCG, and Deputy Leader Alan White, stating that the council would introduce just "two easements", namely:

- A new COVID-19 assessment pathway, which will contribute to the new COVID-19 hospital discharge pathway
- To defer or suspend low risk home care packages to ensure that we can maintain home care for high and medium risk individuals.¹⁷²

The same FOI response bundle contains a further email from Richard Harling, dated 17th April 2020, formally notifying the DHSC of Staffordshire's decision to activate easements via the dedicated easements email address. It goes over and above the protocol laid out in the Guidance, including detail, rationale, and possible impacts:

Dear Department of Health and Social Care
Cc Richard Harling, Director of Health and Care (DASS and DPH)

Please accept this email as notification that Staffordshire County Council has taken a decision to implement the following Care Act easements in line with the Coronavirus Act 2020

- a) Introduce the Covid-19 Assessment Process
- b) Suspend routine Care Act reviews,
- c) Triage new referrals and broker home care for high and medium risk individuals with home care for low risk individuals to be deferred if required;
- d) Work with home care providers to triage existing home care packages, continue care for high and medium risk individuals and suspend care for low risk individuals if required.
- e) Put in place a system of welfare checks for low risk individuals for whom home care has been deferred or suspended.
- f) That the Council review these recommendations every two weeks with the Principal Social Worker and seek to restore Care Act compliant services as soon as is reasonably possible.

Reasons for the Decision- Covid-19 Assessment Process

This decision has been taken as there is insufficient capacity to maintain normal Care Act assessments and reviews due to:

- Staff absence- currently around one third of staff are absent, and
- A requirement to support the Coronavirus COVID-19 hospital discharge pathway.

Reasons for the Decision- Prioritising Home Care if required

With the Coronavirus COVID-19 hospital discharge pathway, the greatest demand for new care services will be for home care. Home care providers however are reporting significant reductions in capacity due to staff sickness absence. Two thirds of home care providers have

council". <https://www.staffordshire.gov.uk/Newsroom/Articles/2020/04-April/Statement-on-Care-Act-easements.aspx>

¹⁷² Email to DHSC via FOI response sent to Liberty on 20th May 2020.

invoked business continuity plans, three have declared a high risk to business continuity even with plans enacted and there is a sizeable backlog of people awaiting homecare.

There is therefore a risk that demand for new home care packages from the COVID-19 hospital discharge pathway and urgent community cases exceeds capacity- and that this delays acute hospital discharges.

The Council is seeking to mitigate this by redeploying staff into home care and by recruiting additional home care workers through the ICare campaign. However this is expected to offer only a partial mitigation.

The Director of Health and Care reported to a Cabinet meeting of 20th May 2020 that:

The Council has taken a decision to introduce 'Care Act easements' if necessary. This means that if we do have to use them it will be in a planned and managed way so that any impact on individuals can be mitigated. We temporarily introduced a shortened COVID-19 assessment to determine whether people needed care and support and whether this was required immediately. People were informed that their full care act assessment would be completed at a later date. This has helped maintain staff capacity to support the COVID-19 hospital discharge pathway and ensure that everyone can be assessed in a timely way.¹⁷³

The Council also indicated that it was putting in place preparations, if needed, to move to Stage 4 easements. This never happened and, by 27th May 2020, "The county council now has improved staffing capacity, and, therefore it is no longer operating under "Care Act Easements" and is now providing full Care Act Assessments and annual reviews."¹⁷⁴

Later, in the Recovery Plan presented at a Cabinet meeting on Wednesday 17th June 2020, certain aspects of the easements approach were revisited and commended, framed as "transformational opportunities". The team would continue to "work to implement video and telephone social care assessments and reviews as routine and enable staff to work flexibly" to harness "the improved ways of working."¹⁷⁵ The Plan went on to detail how and how many users of services had been affected by the operation of easements and the plan to address the backlog in full assessments:

16. The Council has implemented Care Act Easements with a shortened COVID-19 assessment to determine whether people needed care and support and whether this was required immediately. This has been used for 1,813 people. These people now need Care Act assessments and financial assessments.

17. As part of the recovery plan we have now started to complete these assessments. Based on the current available resource capacity, we are aiming to complete these by September 2020. We also temporarily suspended routine Care Act annual reviews; these have now recommenced. The reviews that were suspended will now be completed by September 2020.

¹⁷³<http://moderngov.staffordshire.gov.uk/%28S%28mcpprs45tonyxo55nsbzyt55%29%29/documents/s136867/Staffordshire%20County%20Councils%20Response%20to%20Coronavirus%20COVID-19.pdf> at point 12.

¹⁷⁴ Staffordshire County Council Coronavirus/COVID19 Update:
<https://www.staffordshire.gov.uk/Newsroom/Articles/2020/04-April/Statement-on-Care-Act-easements.aspx>

¹⁷⁵ See <http://moderngov.staffordshire.gov.uk/documents/s137314/Appendix%202%20-%20Health%20and%20Care%20Recovery%20Plan.pdf>

18. In addition to dealing with the backlog, the recovery plan will also ensure that the services are able to respond to an anticipated increase in demand following the emergency response. In the event that demand exceeds this or staff capacity reduces it may be necessary to acquire additional temporary resource.
19. The COVID-19 pandemic has required implementation of streamlined assessments by telephone in the majority of cases. It has been possible to arrange care for people more quickly than would have previously been possible.¹⁷⁶

To augment formal service provision, the council, with support from the LRF (multi-agency and shared with Stoke-on-Trent), also set up a community support effort called “ICare”. This type of community volunteer force was typical of responses across the region, and indeed the country, to supplement the efforts of professional staff.¹⁷⁷

Despite these efforts to maintain services and follow the detail of the Guidance, we note one complaint regarding delays to financial assessments was upheld by the Local Government and Social Care Ombudsman in February 2021; the decision noted that the council had duly enacted some Care Act easements during April and May, but that “these did not apply to charging and financial assessments so the usual Care Act principles... applied”.¹⁷⁸

REFLECTIONS ON THE APPROACH IN EASEMENT COUNCILS

The declared rationale was sustainability of adult services in the context of increased demand and reduced capacity. Pressure on NHS services and hospital beds were also a shared concern, particularly in Birmingham and Solihull with the construction of the Nightingale Hospital. As shown above, communication with elected representatives was raised as an issue in Birmingham whereas in Solihull, for example, there appeared to be political agreement with the decision-making process undertaken. The quality of communication with citizens regarding the introduction of easements was also criticised. For example, Clenton Farquharson, Chair of TLAP, tweeted on 21st April 2020 about the failure of councils to communicate clearly and compassionately about the activation of easements.¹⁷⁹

APPROACH TAKEN BY WEST MIDLANDS LOCAL AUTHORITIES IMPLEMENTING STAGE 2 “FLEXIBILITIES” (WHICH SOME DESCRIBE AS “CARE ACT EASEMENTS”)

In the Guidance, Stage 2 “flexibilities” under the pre-amendment Care Act were not classed as being “easements” per se, as this term applied to those Stages that needed to be formally notified to the DHSC. However, five West Midlands Local Authorities operated these “Stage 2 flexibilities” but in council minutes these “flexibilities” were described as being “easements”.

¹⁷⁶ Ibid.

¹⁷⁷ Cabinet meeting 15th April 2020. Staffordshire County Council’s Response to COVID-19. <http://modern.gov.staffordshire.gov.uk/documents/s136481/The%20County%20Councils%20Response%20to%20COVID-19.pdf>

¹⁷⁸ <https://www.lgo.org.uk/decisions/adult-care-services/charging/20-004-894#point1>

¹⁷⁹ <https://twitter.com/clentonF/status/1252925838665961472?s=20>

This might be considered a “misprint,” but examination of the documents reveals that in relation to several of these Local Authorities the decision to implement such “easements”/ “flexibilities” was accompanied by a considerable degree of formalisation, in line with the decision-making approach taken by those West Midlands Authorities which notified that they were operating higher-level easements. Moreover, statements regarding “moving to Stage 2” in some instances also suggest that these “flexibilities” were viewed as pre-emptive measures with a view to the possibility of moving onto Stages 3 and 4 at some later time.

HEREFORDSHIRE COUNCIL

Herefordshire Council serves a predominantly rural population of some 193,600 citizens.¹⁸⁰ The Council issued a decision on 4th May 2020 to state that it was “at Stage 2 as set out in the guidance” and would “move to Stage 3 and 4, when appropriate and necessary to do so.”¹⁸¹ The decision document notes that there had been a “Countywide Consultation” and extensive consultation is listed as involving the Heads of Service in the areas of Commissioning, Operations and Finance; the Principal Social Worker and Senior Social Workers; the Clinical Commissioning Group and Wye Valley Trust Partners Health and WellBeing Board; Worcester Health and Care NHS Trust (Herefordshire Mental Health and Learning Disability services); Healthwatch; Councillor Crockett (Lead Member for Adults and Communities); and Chris Baird (Chair of Safeguarding Adults Board Director of Children and Families). In addition, it states that there had been “Engagement to Adults and Communities workforce through three workforce webex conferences. Verbal and written briefings to operational staff.”¹⁸²

What is striking here is 1) that this council explicitly defines Stage 2 as “Post Easement – but a continuation by the Council to continue to meet all of its duties under the Care Act 2014 but with some degree of flexibility used;”¹⁸³ and 2) the date- 4th May 2020. This is much later in the process of deciding whether to implement easements or flexibilities and by this point the Local Authorities considered in the previous section were already operating at Stage 3 or Stage 4.

The decision document states that this will:

- a) Introduce the new streamline COVID-19 assessment process.
- b) Suspend routine Care Act reviews.
- c) Triage new referrals, and broker home care for high and medium risk individuals, with home care for low risk individuals to be deferred.
- d) Work with home care providers to triage existing home care packages, continue care for high and medium risk individuals, and suspend care for low risk individuals.

¹⁸⁰ <https://understanding.herefordshire.gov.uk/quick-facts/>

¹⁸¹ Decision title: To make a formal decision to implement Easements to the Care Act 2014, introduced by the Coronavirus Act 2020 and associated Regulations. 4th May 2020. Decision maker: Stephen Vickers, Directors of Adults and Communities.

<https://councillors.herefordshire.gov.uk/documents/s50079596/RooD%20COVID%2019%20and%20Care%20Act%20update%2014.04.docx.pdf>

¹⁸² Ibid.

¹⁸³ Ibid. at page 2. We haven't seen this definition used by any of the other councils we have examined.

e) Put in place a system of welfare checks for low risk individuals for whom home care has been deferred or suspended.¹⁸⁴

The structure of this document is also different than those found in the Stage 3 and 4 councils in that it states that

2. The DASS, or acting DASS, in consultation with the relevant Assistant Directors and Head of Service, will take all necessary operational decisions and decide when to implement the easements (a) to (e) above in each particular service area. Prior to any decision being made the council will ensure that it continues to base decisions on the Ethical Framework and will assess need proportionately.

3. That the Council reviews the easements of its Care Act duties on a weekly basis and seeks to reinstate normal Care Act services as soon as possible.¹⁸⁵

Under the other Stage 3 or 4 processes, the Decision is that of a decision to actually activate the easements. This document appears instead to provide the DASS with the authority to implement the easements after this decision has been made.

Subsequently, in a meeting of the Council's General Scrutiny Committee on 11th June 2021, the Solicitor to the Council commented that

37. The Council during the covid period followed the easement guidance and ethical framework as set out above. Statutory work continued, such as requirements within the Mental Capacity Act 2005, the adherence to Human Rights Act 1998, Mental Health Act 2007, assessments and assessments under the Care Act 2014 and safeguarding continued.

38. Additional government funding via the NHS became available to source additional social work staff to support the discharge to assess 2 hour response. With national demand on an already capacity limited workforce there was a delay in recruiting the staff we were funded for. The approach however was taken to realign our social care and social work operation workforce to ensure that they always concentrated on those with greatest need first. Due to this careful realignment of staff as well as changing our processes for discharge to assess and the increased capacity that working from home released we were able to adapt and effectively respond to the significant 33% additional assessment work through the covid period.

39. Social workers and social care assessors continued to operate a full service throughout the covid-period including emergency social work response out of hours service. Safeguarding and court work continued (the latter virtually) as did leading on the social care response in supporting care facilities and individuals and families in crisis during covid. Face to face work continued where it was judged as necessary for the immediate safeguarding and lawful assessment of an individual but with the full and early adoption of PPE and rigorous application of risk assessments for our staff regarding vulnerability to infection as set out by Human Resources department was successfully minimised.¹⁸⁶

¹⁸⁴ Ibid. at page 1.

¹⁸⁵ Ibid.

¹⁸⁶ Herefordshire Council's response to the Covid Pandemic Meeting: General scrutiny committee Meeting date: Friday 11 June 2021 Report by: Solicitor to the council.
https://councillors.herefordshire.gov.uk/documents/s50090304/07_Herefordshire%20councils%20response%20to%20the%20covid%20pandemic_report.pdf

From the council documentation we were not able to identify the point at which Herefordshire Council decided to cease to operate at Stage 2.

SANDWELL METROPOLITAN BOROUGH COUNCIL

Sandwell is a Local Authority serving a population of approximately 327,378 citizens.¹⁸⁷ This council is striking in that it operated an 'Emergency Committee' which engaged with adult social care issues during the pandemic. In documentation issued there is express reference to "Care Act Easements". In his Report on 22nd April 2020 to the Sandwell Council Emergency Committee, the Adult Social Care Lead Stuart Lackenby laid out the request for

- approval for the implementation of Care Act Easements
- approval for the implementation of a COVID-19 assessment process to support the hospital discharge pathway.

However, it appears that this process has already begun. The document states that "Care Act easements"

have been implemented with immediate effect as there is currently insufficient capacity to maintain normal Care Act assessments and reviews due to the following reasons:

- Staff absence as result of self-isolating and sickness
- Social distancing – reducing the ability to undertake face to face intervention
- A requirement to support the Coronavirus COVID-19 hospital discharge pathway.¹⁸⁸

The decision to implement easements is to be reviewed on a fortnightly basis, with a view to returning to normal practice as soon as is practically possible.¹⁸⁹

In addition, as part of the hospital discharge pathway, it was stated that

The COVID-19 assessment process would involve a short assessment, which would capture enough information to make a decision about whether an individual needs care and determine the most appropriate provision of care. Introduction of this process would avoid delays in the COVID-19 hospital discharge pathway and allow best use to be made of social work capacity.¹⁹⁰

The approach and rationale given here seems to be very similar to that taken in those Authorities which operated a Stage 3 and Stage 4 easement process. This document, in contrast to that of Herefordshire, does not mention any formal consultation process undertaken prior to implementation. However, it did indicate that following implementation

¹⁸⁷ As of 2018, see <https://www.sandwelltrends.info/sandwell-in-brief/>

¹⁸⁸ <https://sandwell.moderngov.co.uk/Data/Emergency%20Committee/202004221414/Agenda/05d%20-%20Appendix%203%20Adult%20Social%20Care%20Update%20Report%20April%202020.pdf>

¹⁸⁹ Ibid.

¹⁹⁰ Ibid at para 2.3.

there was to be a fortnightly report to the Cabinet Member for Healthy Lives and the Chair of the Health and Wellbeing Board regarding

the continued requirement of COVID-19 assessment process. In addition to this a proposal to be offered to providers of care and support to enable their ongoing sustainability through this difficult period will be developed and presented to a future meeting of this committee.¹⁹¹

The minutes of that Emergency Committee meeting state that:

Approval was now sought to:-

- implement Care Act easements, with immediate effect, including the suspension of charging for adult social care and the adoption of a revised care management pathway. These would be applied only when necessary;
- a COVID-19 assessment process to be implemented to support the hospital discharge pathway;
- develop an offer to providers of care and support to enable their ongoing sustainability through this difficult period, for consideration at a future meeting of the Committee.¹⁹²

While there is reference to Care Act easements, and there is clear reference to the easement Guidance, it does not state whether this was actually intended to be a Stage 2 “easement” i.e.a “flexibility”. Moreover, the reasons given for implementation include “social distancing” which, as previously discussed, is usually considered to be a public health directive. The language of easements continues to be used in later council documentation. A Report titled “The Impact of Covid-19 on Operational Risks” for the subsequent meeting of the Emergency Committee on 6th May 2020 states under “Covid-19 Impact on Risk”:

As a result of the easements in respect of these areas, there will be a backlog in assessments and inspections which will need to be prioritised given the pressure on available resources when the easements are lifted.¹⁹³

In his Report to the Emergency Committee on 27th May 2020 “Covid-19 Reset and Recovery Planning: Roadmap of Activity” Chief Executive David Stevens clearly states that the Council did not have to activate higher-level Care Act easements:

Services – we will assess the impact on how service delivery has changed during the response phase to drive decisions on what services will be needed in the short, medium and longer term. These will then fall into the following categories that will be considered as part of the development of the recovery plan:

¹⁹¹ Ibid .

¹⁹² Minutes of Emergency Committee Wednesday 22 April 2020 at 14:14 at Sandwell Council House, Oldbury
<https://sandwell.moderngov.co.uk/Data/Emergency%20Committee/202004221414/Agenda/Minutes%20of%20the%20Emergency%20Committee%20-%2022%20April%202020.pdf>

¹⁹³ Impact of Covid 19 on Operational Risks @ April 2020
<https://sandwell.moderngov.co.uk/Data/Emergency%20Committee/202005061430/Agenda/05c%20-%20Covid%2019%20Risk%202020-4-28%20Appendix%20C.pdf>

services that have continued, but delivered differently (e.g. corporate contact centre staff working from home or adapting social work practices so that Level 3 Care Act easements (requiring notification to DHSC) have not had to be applied).¹⁹⁴

This appears to be the last available reference to easements or to flexibilities under the Guidance in the documentation produced by Sandwell Metropolitan Borough Council.

TELFORD AND WREKIN COUNCIL

Telford and Wrekin is a smaller West Midlands Council with a 2019 population of 179,900 people.¹⁹⁵ This Local Authority initially states that it is operating “stage 2 flexibilities” but a broader range of documentation refers to these as “easements”.

This council produced a report titled “Care Act Easement: Implementation of the Coronavirus Act 2020” drafted by Jonathan Rowe, Executive Director Adult Social Care Health Integration & Wellbeing. It states that Telford and Wrekin is “operating flexibilities under the pre-amendment Care Act and, therefore, are at Stage 2 as set out within the guidance.”¹⁹⁶ However, it appears to conflate such flexibilities with “easements” and states that each of the three categories identified are “required due to the impact on service types and usual duties that have been changed, delayed or cancelled short term.”¹⁹⁷ It goes on to detail what it defines as the “easement” and the “flexibilities and impact” associated with each:

Stage 2 Flexibilities under the pre-amendment Care Act

Stage 2 flexibilities under the pre-amendment Care Act are required due to the impact on service types and usual duties that have been changed, delayed or cancelled short term. It outlines decisions made for individuals, families, carers who ordinarily use the service or duties to be advised. Each easement permitted under the legislation and the flexibility applied by Telford and Wrekin Council is highlighted below:

Easement:

We will not need to carry out detailed assessments of individuals care and support needs, as per Care Act requirements, but will respond in a timely way and make an assessment of what care and support is needed. We will continue to involve the people who are important to the individual in this process, this will include families, carers, current care and support teams, and/or other agencies.

Flexibility and Impact:

¹⁹⁴Report to Emergency Committee on 27th May 2020 “Covid-19 Reset and Recovery Planning- Roadmap of Activity” Director: Chief Executive David Stevens. <http://www.bigplansforsandwell.co.uk/media/6970/covid-19-reset-recovery-planning-roadmap-of-activity-emergency-committee-report.pdf>

¹⁹⁵ ONS ME 2019 https://www.telford.gov.uk/info/20121/facts_and_figures/410/population_characteristics

¹⁹⁶ <https://democracy.telford.gov.uk/documents/s5392/Care%20Act%20Easements%20-%20Coronavirus%20Bill%202020%20v3%20HWB.pdf>

¹⁹⁷ Ibid.

We have made adjustments to the way we carry out Care Act assessments and Carers assessments as we have suspended all non-essential visits. All staff will need to complete pre-visit questionnaires where visits are required, including all AMHP assessments to support government guidelines around social distancing. This may impact on the details captured within an assessment and our ability to operate in a strength-based way may also be affected. We will use a variety of ways to carry out assessments including video calling, the telephone, and/or email(s). This will ensure we are able to gather information to carry out assessments. Pre-amendment business processes should be followed, there have been no amendments to assessment paperwork.

Easement:

Local Authorities will not have to carry out financial assessments in compliance with pre-amendment Care Act requirements. They will, however, have powers to charge people retrospectively for the care and support they receive during this period, subject to giving reasonable information in advance about this, and a later financial assessment.

Flexibility and Impact:

A 3-month suspension of client contribution for all care and support delivered to any individuals in the community (this does not include those who are already in, or placed in, residential or nursing care during this period), this does include all individuals who are receiving or start care and support in the community during this period. All financial assessment activity will continue during this period, including front line workers following business as usual processes. Requests for financial information from individuals or their representatives will also continue. It is however, recognised that there will be a delay in the client contribution being communicated with the individual – this will be communicated at the earliest point.

Easement:

Local Authorities will not have to prepare or review care and support plans in line with the pre-amendment Care Act provisions. They will however still be expected to carry out proportionate, person-centred care planning which provides sufficient information to all concerned, particularly those providing care and support, often at short notice.

Flexibility and Impact:

Scheduled reviews will continue to be completed, however these will be completed remotely where possible. Information should be gathered from the provider, all people important to the individual and consideration be given to an earlier review period if necessary to follow up any actions, particularly that promote independence using a strength-based approach, that are unable to be followed up at this time due to social distancing. Pre-amendment business processes should be followed, there have been no amendments to review paperwork.

Easement:

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. Local Authorities will still be expected to take all reasonable steps to continue to meet

needs as now. In the event that they are unable to do so, the powers will enable them to prioritise the most pressing needs, for example enhanced support for people who are ill or self-isolating, and to temporarily delay or reduce other care provision.

Impact:

This would allow Adult Social Care to temporarily remove and reduce support in order to allow the market to support those with the most pressing needs. **We have had no need at this stage, to implement this easement.** [our emphasis] We have not experienced an impact on front line staff or a surge in demand which has impacted the care market. Any decisions to implement this easement would involve contact with all those individuals, carers and families this would impact on.

This Report also indicates that they did not need to implement the easement enabling “removal or reduction of support in order to allow the market to support those with the most pressing needs,”¹⁹⁸ and that “[W]e have not experienced an impact on frontline staff or a surge in demand which has impacted the care market.”¹⁹⁹ It also noted the increased multi-agency working which had taken place.

There is further confusion apparent when the Report was presented by Sarah Dillion, Director of Adult Social Care, to the Health & Wellbeing Board on 10th June 2020. The minutes of this meeting suggest a reiteration of the main “flexibilities” in place. Having rated itself at “level two,” these included items that could be viewed as falling under social distancing guidance, namely:

Adjustments to the method of undertaking Care Act Assessments in line with social distancing and non-essential visits; Three-month suspension of client contribution for all care and support delivered in the community; Scheduled reviews of care and support plans undertaken remotely where possible.²⁰⁰

Nonetheless,

Members wanted some clarity as to when it could be expected that the emergency regulations would be suspended and the flexibilities reversed. The Director: Adult Social Care responded by saying that biggest area of concern was the daytime support for individuals with disabilities while social distancing measures were in place. Work was being done to assess the types of support they can offer, but daytime support could not be resumed until social distancing measures were relaxed.²⁰¹

The conflation of “flexibilities” and “easements” continued throughout the year. As late as 3rd December 2020, the Health and Wellbeing Board was discussing the continuing application of what it regarded as Stage 2 “easements”:

¹⁹⁸ Ibid.

¹⁹⁹ Ibid.

²⁰⁰<https://democracy.telford.gov.uk/documents/s5772/HWBB%2010%20June%20Minutes%20Final%20Draft.pdf>

²⁰¹<https://democracy.telford.gov.uk/documents/s5772/HWBB%2010%20June%20Minutes%20Final%20Draft.pdf>

The Board heard how Council was assessed at Stage 2 with regard to the use of the easements, meaning that there had not been a significant change to the care and support provided by the council, but there were some variations in the way it is was delivered. The first easement meant that detailed assessments of individual care and support could be suspended, and instead Local Authorities only needed to respond in a timely manner to identify what the care and support needs were. The Board heard how Council have not had to do this, instead have undertaken detailed assessments using the telephone or remote conferencing software. Likewise, essential visits were suspended during restrictions, but as these were lifted, essential visits returned with staff being provided with the appropriate personal protective equipment and undertook pre-visit questionnaires.

The second easement permitted for the suspension of financial assessments which were in compliance with the pre-amendment Care Act and for care and support provided to be charged retrospectively, subject to reasonable information provided in advance and followed by a financial assessment at a later date. The Board were informed that financial assessments continued as business as usual and the decision was made to suspend client contribution for three months for care and support delivered in this time.

The third easement allowed Local Authorities to not prepare or review care and support plans in line with the pre-amendment Care Act provisions. However, Telford & Wrekin Council continued to deliver the scheduled reviews and these were completed remotely where possible.²⁰²

Minutes of the meeting noted that the Members had asked what services had been cancelled and the PSW had stated that:

the services mostly impacted were the day centres due to the social distancing measures. Those impacted by these closures were identified and alternative support was established, such as the launch of MyOptions online weekly activity for individuals with learning difficulties, and smaller social bubbles for individuals with staff to access the community.²⁰³

Although Telford and Wrekin produced relevant documentation to explain decision-making both internally at committee level, via correspondence to service providers, and through the website to the public, it is interesting to note the conflation of impacts of “Stage 2 easements” or “flexibilities” with impacts resulting from social distancing. In many other Local Authorities, day centre closures and the shift from face-to-face contacts to virtual communications were not considered as relating to easements.

WALSALL COUNCIL

Walsall Council is one of the relatively smaller councils in the West Midlands, with a population of 283,400. The Local Authority serves communities with high levels of socio-economic deprivation, which were consequently more vulnerable to Covid-19 than many

²⁰² <https://democracy.telford.gov.uk/documents/s8467/HWBB%20Minutes%203.12.2020%20-%20Final%20Draft.pdf>

²⁰³ Ibid.

other parts of the country. The British Red Cross has provided a Covid-19 vulnerability index which puts Walsall in the 20% most vulnerable local authorities in England.²⁰⁴

An undated Framework document, presumably from very early in the pandemic, outlines the emergency legislation and Government Guidance and asserts that “The Council will do everything they can to continue meeting their existing duties prior to the Coronavirus Act provisions coming into force.”²⁰⁵

There is clear notification on the council website from as early as March 2020 that there would be changes in approaches to service delivery from the 23rd of that month as a result of the pandemic. They announced that “service providers will be delivering care in a different way and may mean changes to how your care is delivered.”²⁰⁶ Although the term “easements” is not explicitly used here, these changes resembled the kind of changes that might be made under the emergency provisions:

Walsall Council and care providers are working hard together to keep you safe and ensure that care is available to support those people that are most vulnerable in the borough. To do this we may need to make some changes to your care, which may include;

1. Reducing frequency or duration of call times, if appropriate;
2. Replacing face to face calls with telephone contact;
3. Temporarily stopping some calls and services.²⁰⁷

In information for providers, replicated in information for “vulnerable residents,” the council spells out its position more clearly:

Currently in Walsall we are at stage 2 which gives flexibility but this is not an easement of our Care Act duties and this decision is regularly reviewed in line with the guidance.²⁰⁸

There does not appear to be very much engagement with the issue of easements in the public record of the Health and Wellbeing Board, indeed there is only one publicly recorded meeting of that Board listed on the council website between 2019 and 2021. Instead, information regarding the easements can be discerned from segments of information posted on the website and in letters to service providers.

By 9th April 2020, a co-signed letter²⁰⁹ was sent from Kerrie Allward, then Director of Commissioning at Walsall Council, and Andy Rust, Head of Commissioning at Walsall Clinical

²⁰⁴ See Walsall Council Covid-19 Outbreak Management Plan. June 2020, Draft V1.1, at page 5.

²⁰⁵[https://go.walsall.gov.uk/Portals/0/Uploads/SocialCare/Framework%20for%20the%20implementation%20of%20the%20Care%20Act%20Easements%20created%20as%20per%20the%20Coronavirus%20Act%202020%20-%20final%20-%2005_06_2020%20\(003\).pdf?ver=2020-06-05-152054-847](https://go.walsall.gov.uk/Portals/0/Uploads/SocialCare/Framework%20for%20the%20implementation%20of%20the%20Care%20Act%20Easements%20created%20as%20per%20the%20Coronavirus%20Act%202020%20-%20final%20-%2005_06_2020%20(003).pdf?ver=2020-06-05-152054-847)

²⁰⁶<https://go.walsall.gov.uk/Portals/0/Uploads/COVID19/Appendix%201a%20Service%20User%20Leaflet.pdf?ver=2020-04-15-093909-760> dated 2nd April 2020, and <https://peopleplus.mylifeportal.co.uk/media/34177/walsall-faq-your-care.pdf>

²⁰⁷ Ibid.

²⁰⁸ https://go.walsall.gov.uk/covid-19_information/covid-19_-_help_for_residents/covid-19_-_supporting_vulnerable_residents/covid-19_-_for_providers_-_supporting_vulnerable_residents

²⁰⁹ https://go.walsall.gov.uk/Portals/0/Uploads/COVID19/provider%20update%20letter%20-%209_4_20.pdf?ver=2020-04-15-093909-907

Commissioning Group, to local service providers, alerting them to the possibility of changes to provision under the Care Act, requesting participation in a R-A-G rating of their capacity, and explaining temporary changes to the usual payment system:

Due to the unprecedented pressures across the health and social care system, temporary changes have been made to the Care Act 2014. These changes are to enable local authorities to prioritise the services they offer to ensure that the most urgent and serious care needs are met, even if this means not meeting everyone's assessed needs in full or delaying some assessments. These Care Act easements arise from the Coronavirus Act 2020 and the local authority should only take a decision to begin exercising these 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, and where to continue to try to do so is likely to result in urgent or acute needs not being met, potentially risking life. This needs to be evidenced and is subject to significant local and national scrutiny with the decision robustly reviewed every 2 weeks.²¹⁰

On 17th April 2020, a further co-signed letter was sent to local service providers, reiterating the message, reassuring providers that funding was still available, and explaining how a "flexible" approach could mitigate against reduced staff capacity.²¹¹ It also stated that:

From Monday 23 March 2020, the Council has committed to paying Social Care providers against the Support Plan for services delivered to services users living in Walsall. The Care Act easements are formally implemented from 9th April 2020 and will be reviewed in 2 weeks' time.²¹²

It also stated that:

This gives providers the mandate to deliver care flexibly based on their risk rating of individual needs and means that for some service users, some services will change, some will be reduced by frequency or call duration, some may be delivered by the offer of a virtual care calls and in some cases, calls will be temporarily stopped. We anticipate that by adopting this approach. Providers will create capacity to mitigate the risks of reduced staffing through sickness or self-isolation and can pick up anticipated additional packages.²¹³

This is a formal announcement that Care Act easements have been activated, but with no indication of the easement 'stage'. There is however a clear statement of prioritisation "to ensure the most urgent and serious care needs are met" and that delivery of care may be undertaken "flexibly" with reference to the risk rating of the individual.

By 5th May 2020, a further update to providers of supported living and complex community based support services confirmed that additional capacity was no longer required:

²¹⁰ Ibid.

²¹¹ https://go.walsall.gov.uk/Portals/0/Uploads/COVID19/provider%20update%20COVID%20letter%20%20%20v3_1.pdf?ver=2020-05-22-110259-697

²¹² https://go.walsall.gov.uk/Portals/0/Uploads/COVID19/provider%20update%20COVID%20letter%20%20%20v3_1.pdf?ver=2020-05-22-110259-697

²¹³ Ibid.

On 9 April 2020, I wrote to advise you of the Council's commitment to pay providers against the Support Plan, for the provision of supported living and complex community based support services delivered to services users living in Walsall funded by Walsall Council. The intended outcome of this approach was to give providers the mandate to deliver care flexibly based on their risk rating of individual needs which meant that for some service users, some services would change, some would be reduced by frequency or call duration, some may be delivered by the offer of a virtual care calls and in some cases, calls would be temporarily stopped. We anticipated that by adopting this approach providers would create capacity to mitigate the risks including the picking up of anticipated additional packages.

As intended these arrangements have been robustly reviewed and evidence shows that additional capacity in the Supported Living and Complex Care domiciliary care market is not required. As there is no longer valid justification to continue paying against the support plan I am writing to confirm the Council's decision to reinstate the terms and conditions of the [existing contracts]... with effect from 11 May 2020.²¹⁴

However, in terms of community based provision, it appears that changes were in place for much longer. In a letter dated 22nd May 2020 from Kerrie Allward, then Interim Executive Director Adult Social Care, to community based providers it was stated that:

Re: COVID-19 Market Update: Community Based Provision

On 9 April 2020, I wrote to advise you of the Council's commitment to pay providers against the Support Plan, for the provision of community based support services, delivered to service users living in Walsall funded by Walsall Council. The intended outcome of this approach was to give providers the mandate to deliver care flexibly based on their risk rating of individual needs which meant that for some service users, some services would change, some would be reduced by frequency or call duration, some may be delivered by the offer of virtual care calls and in some cases, calls would be temporarily stopped. We anticipated that by adopting this approach providers would create capacity to mitigate the risks including the picking up of anticipated additional packages.²¹⁵

I am now in a position to confirm that following Cabinet meeting on the 19 May 2020, Cabinet have approved the arrangement to pay via individual support plan values can continue in the short term as follows:

1. The service provider, shall continue to work flexibly, innovatively and prioritise their resources, ensuring that the service user's core assessed needs are met, as specified within the service user individual support plan, as agreed in collaboration with the service user and/or their relative/carer/representative;
2. The previously communicated contractual variation, set out in the Council's letter dated 9 April 2020, will cease on 30 June 2020, in order to align with the date in the Procurement Policy Note - Supplier relief due to COVID-19 (PPN 02/20);

²¹⁴ <https://go.walsall.gov.uk/Portals/0/Uploads/COVID19/Provider%20update%20COVID%20letter%203-Supported%20Living%20and%20Complex%20Care-Procurement%20FINAL050520.pdf?ver=2020-05-22-142559-160>

²¹⁵ <https://go.walsall.gov.uk/Portals/0/Uploads/Provider%20update%20COVID%20letter%204%20Community%20Based%20Provision%20Final.pdf?ver=2020-05-22-182421-460> Ref: COVID-19/ASCC

3. There is a continued obligation for the service provider to complete an exceptions template, detailing all call variations and cancellations, as set out in (Appendix 2) of the Council's letter dated 9 April 2020, and submit this to [the brokerage team] each Monday."²¹⁶

In Walsall there is a clear statement that the "easements," activated early in April, remained in place well into the first pandemic winter. A letter,²¹⁷ dated 21st December 2020 regarding "flexible delivery" from Kerrie Allward to providers of community based support and CHC services, states that:

Flexible delivery against CBS/CHC service users

Due to the unprecedented pressures across the health and social care system, under the Coronavirus Act 2020 temporary changes have been made to the Care Act 2014. These changes are to enable local authorities to prioritise the services they offer to ensure that the most urgent and serious care needs are met, even if this means not meeting everyone's assessed needs in full or delaying some assessments. **Therefore, the Care Act easements formally implemented from 09 April 2020 will also continue, this gives providers the mandate to deliver care flexibly based on their risk rating of individual needs[our emphasis].** For a number of service users this could mean a change to care and support for instance care could be reduced by frequency or call duration, care may be delivered by the offer of a virtual wellbeing care call and in some cases care could be temporarily stopped. We anticipate that by continuing this approach providers will create capacity to take on increased demand/additional packages specifically during the pandemic and to alleviate winter pressures [our emphasis].²¹⁸

On a positive note on how local Care Homes had coped, Daren Fradgley, Walsall Together lead, presented a report to the Health and Wellbeing Board on 10th October 2020 that highlighted the area's healthy inter-agency working partnerships:

significant effort during the current Covid-19 pandemic to support care homes, the intermediate care system and the provision of a stroke rehabilitation system at short notice. He also gave feedback from the recent Care Quality Commission review which had recognised that joint working relationships in Walsall were mature and effective and that decisions were taken quickly which had resulted in strong PPE management and had enabled care to be directed and provided to the vulnerable first. In addition, the review found that Walsall Together was recognised as established and would be reported nationally; no evidence of barriers had been found; planning of patient's care needs had been impressive; and there had been excellent communication systems during this challenging time.

Councillor Craddock said that he was overwhelmed by the positive feedback from the CQC and added that the review had identified that only Walsall had arrangements in place under s.75 of the Care Act [re. integrated commissioning and provision] and that other authorities were looking to replicate this model.²¹⁹

²¹⁶ Ibid.

²¹⁷ https://go.walsall.gov.uk/Portals/0/Uploads/Communications/Provider%20update%20COVID%20letter%20-%20CBS-CM%20providers%20Dec%202020_docx.pdf?ver=2020-12-21-155539-910

²¹⁸ Ibid.

²¹⁹ Meeting of the Health and Wellbeing Board, 10th October 2020.

IMPLEMENTING AND THEN NOT IMPLEMENTING STAGE 2: THE CASE OF DUDLEY METROPOLITAN BOROUGH COUNCIL

Dudley Metropolitan Borough Council serves a population of approximately 313,000 citizens. As of June 2020, Dudley's Covid-19 infection rate was the lowest in the Black Country.²²⁰ Dudley is notable in that it had undertaken its own Pandemic Flu planning "Exercise Perinthus" just prior to the Pandemic in November 2019 a joint exercise between Dudley Council, The Dudley Group NHS Foundation Trust, and Dudley CCG.²²¹ The usefulness of Exercise Perinthus is demonstrated in the prompt establishment of the local response in terms of command and control, internal and external communications, and utilising local third sector networks effectively from early in the pandemic.

However, Dudley MBC is also notable as a Local Authority which states that it has implemented Stage 2 easements, continuing well into October 2020; but then later states that it has not done so. The council had established an "8-Point Plan" to address challenges associated with the pandemic. This included objectives to "Protect the most Vulnerable" (Point 4: "Prioritising support to the most at risk groups in Dudley, such as the elderly and those with long term pre-existing medical conditions, and those shielding"); Support and Protect the Workforce (Point 5: "Continuing to review and updating HR policies and resources to support homeworking and redeployment of staff to business critical functions in line with national guidance"); and "Support frontline services" (Point 6: "Supporting NHS and Social Care partners to manage cases and outbreaks of COVID-19").²²²

There is little mention of Care Act easements in the minutes from the first half of 2020, though the Director Adult Services tweeted from an online Health and Adult Social Care Scrutiny Board meeting on 5th May 2020 – the minutes of which are not currently available online – that the Care Act easements were under review and that the council had not triggered them.

Yet at the Health and Adult Social Care Scrutiny Board on 15th October 2020, the Report of the Director of Adult Social Care states that: "Care Act Easements remained at level two and were reviewed on a weekly basis by the Director of Adult Social Care and the Principal Social Worker."²²³

Further:

In referring to Care Act Easements, it was reported that Dudley had kept these down at Level 2 whereas some Authorities, even across the West Midlands, had used easements at Level 4. In concluding, Professor Kingston indicated that, although work had stabilised and was moving towards some degree of normality, challenges would inevitably be faced again during the second peak of the Pandemic and work would potentially revert to virtual consultations where needed.²²⁴

²²⁰ Covid Situation in Dudley Borough, 1st July 2020, presented to Health and Wellbeing Board.

²²¹ Health and Adult Social Care Scrutiny Committee 10th June 2020, Report of the Acting Director of Public Health Update on COVID-19.

²²² Report of the Acting Director of Public Health to Health and Adult Care Scrutiny Committee, 10th June 2020.

²²³ Health and Adult Social Care Scrutiny – Scrutiny Review – 15th October 2020

Report of the Director of Adult Social Care Council response to the Covid-19 Pandemic – Adult Safeguarding and Deprivation of Liberty Safeguards (DOLS).

²²⁴ Minutes of the Health and Adult Social Care Scrutiny Committee, 15 October 2020, at page 3.

Flexibilities and adaptations included redeployment of staff from working in closed day centres to instead operate the 'Pleased to Meet You' helpline for supporting those who felt socially isolated,²²⁵ as well as a wider move towards online working for council staff.

Confusingly, Dudley MBC state in their Quarterly Management Report 2020-2021 (Quarter 2 July to September 2020) that they "did not enact any of the Care Act Easements during the pandemic and maintained a full statutory service."²²⁶ The Care Act easements were identified as "the major point of comparison" for benchmarking in comparison with neighbouring Local Authorities. This benchmark was presented in successive Quarterly Management Reports through until mid-2021.²²⁷

Of course, Stage 2 easements were defined as "flexibilities" within the Care Act, rather than "easements" under the DHSC Guidance documents, but this statement is nonetheless very striking given the pre-existing council documentation stating that "stage 2 easements" were operational, as noted above.

Dudley MBC won a Laing Buisson Outstanding Response to COVID in Social Care Award in 2020, the only Local Authority shortlisted nationally in the category celebrating "[E]xamples of strong culture delivering better care, excellent communication, early responses, adapting to and overcoming challenges during the pandemic including the turn around of a challenging situation in social care."²²⁸

WEST MIDLANDS LOCAL AUTHORITIES WHICH STATED THAT THEY DID NOT OPERATE EASEMENTS

SHROPSHIRE

Shropshire has a population of approximately 323,136 residents (as of 2019), across a wide, mostly rural area, with a higher proportion of over 65-year-olds than the national average.²²⁹ Shropshire Council states that it did not implement easements:

Social Care Easements have not needed to be activated by Shropshire Council. A range of trigger points such as workforce capacity, staff absence, demand on teams, waiting lists will be continuously monitored against any need to enact easements.²³⁰

²²⁵ Ibid.

²²⁶ Quarter 2 July to September 2020 at <https://www.dudley.gov.uk/council-community/performance/> at page 28.

²²⁷ <https://www.dudley.gov.uk/council-community/performance/>

²²⁸ <https://laingbuissonawards.com/the-2020-finalists/>

²²⁹ <https://www.shropshire.gov.uk/information-intelligence-and-insight/facts-and-figures/population/>

²³⁰ Meeting of the Health & Wellbeing Board 12th November 2020, at page 29.
www.shropshire.gov.uk/HealthAndWellbeingBoard12November2020

It did however adapt services to address issues such as social distancing through a shift to online working and communication for most council staff, and a move from 'buildings based' day opportunities towards 'Good Things to do at Home' alternatives and online activities. Notably, the shift to digital went relatively smoothly as the council was already moving in this direction pre-pandemic for unrelated environmental and workplace reasons.

Some of the challenges facing social care and how these were being addressed were set out in a report by Councillor Dean Carroll, the Portfolio Holder for Adult Social Care, Public Health and Climate Change at the Council meeting on 16th July 2020. This was however a positive report and he described "an amazing person-centred approach that reaches out to local people when they need support." In particular, he noted that:

4.1 The Community Social Work Teams have continued to respond effectively to their daily referral activity. There has been some focussed work during the last 12 months in all our teams to reduce waiting times. This has resulted in a significant reduction in the number of individuals waiting to be contacted and where required, assessments are being undertaken with minimal delay. Our teams currently have the lowest waiting list numbers than they have had for several years. This is a clear impact of the digital transformation work, improved systems and use of 'live' data that was previously unavailable...

17.1 In recent months our centres supporting people with community-based daytime activities and opportunities have had to radically alter the way that they deliver these. It has not been possible to support people within our buildings or use our transport, and a very different approach has been adopted...

17.4 We are working with community partners on the Good Things to Do at Home project – inspired by the Happy Boxes that the teams immediately started to deliver to the people they would usually be supporting at the centres – and will learn from the project to create an exciting, creative, interactive and ambitious new stream of activity at the heart of our work.²³¹

Additional financial and practical support was put in place for families and unpaid carers, including "grant funding for both A4U, to support those caring for people living with autism, and for Taking Part, specifically to provide additional support for people caring for someone with a learning disability."²³² The council also provided 'carer's passes' to identify those who would need more time outside for shopping and prescription collections during lockdowns. The shift to digital was noted among the informal carer population, as well as amongst council workers: "an increasing interest and take-up in the use of digital technology by carers to connect with support and with each other."²³³

Going into Winter 2020, a 9th November report for the Health and Social Care Overview and Scrutiny Committee on Adult Social Care Winter Planning reiterated the team's successes in digital working and meeting needs, and emphasised again that the council had not needed to use easements.

²³¹ Report of the Portfolio Holder for Adult Social Care/Public Health and Climate Change Portfolio Holder: Councillor Dean Carroll Council 16 July 2020, at page 1.

²³² Ibid. at page 4.

²³³ Ibid.

Our social work and occupational therapy teams started the pandemic period in a strong position and as a service adjusted creatively to the response that was required. We benefit from a strong domiciliary care market and good relationships with voluntary and community organisations. We have strengths and value based practice embedded across the teams. We have a loyal and dedicated workforce who are both flexible and open to change. New ways of working have been adopted, such as undertaking remote assessments through the use of a range of technology and IT has been provided to staff enabling them to work from home. Measures have been put in place to track both workforce availability and service demand. During lockdown 93% of the workforce were in work and whilst demand for adult social care initially dipped, when it did increase we were able to meet demand with many teams operating a 'business as usual' model.

Social work and occupational therapy teams are experienced at applying legislative frameworks to their practice. The paperwork processes direct practitioners to work in a legal and strengths based manner and there are quality assurance processes in place to measure this, e.g. assessments have to be approved by the worker's line manager. Thematic audits are carried out of practitioners' work and action is taken to address any areas for improvement.

If the council should enact easements guidance will be given to teams on their work within the Care Act and all decisions will be informed by the Ethical Framework for Adult Social Care.

Care Act easements have **not** needed to be enacted by Shropshire Council. A range of trigger points such as workforce capacity, staff absence, demand on teams, waiting lists will be continuously monitored against any need to enact easements.²³⁴

In Shropshire, as elsewhere in the UK, there were reports that day centres had been closed,²³⁵ including those run by Age UK. Some remained closed or at reduced capacity into March 2021 and beyond.²³⁶ Healthwatch Shropshire, in its July 2020 report, indicated that there was some evidence from their surveys that a small number of individual service users had had their service provision adversely impacted during the pandemic, though the majority of those surveyed reported no adverse impact.

205 people indicated that they had experience of social care, 150 (73%) told us that it had not been affected by the pandemic, 55 (27%) told us that it had. Of those 55 people 45 gave us more information. Thirteen of the 45 (29%) told us about their concerns over not being able to visit relatives or friends in care homes. Thirteen people (29%) also reported interruptions or cancellation of normal care or support provision. Five of these reported that telephone contact had been put in place, this was seen mostly in a positive light.²³⁷

²³⁴ Shropshire Council Adult Social Care Covid-19 Winter Plan 2020/2021. 9

²³⁵ <https://www.shropshirestar.com/news/health/coronavirus-covid19/2021/01/27/shropshire-day-service-centres-to-remain-closed-until-mid-february/>

²³⁶ <https://www.ageuk.org.uk/shropshireandtelford/about-us/news/articles/2021/age-uk-day-centres-win-award>

²³⁷ <https://www.healthwatchshropshire.co.uk/report/2020-07-07/health-care-and-well-being-services-during-covid-19-pandemic>, published 9th July 2020.

CITY OF WOLVERHAMPTON COUNCIL

Wolverhampton Council stands out as a council which did not ultimately enact easements, but did however undertake a considerable amount of preparatory work in relation to their potential implementation. Unlike, other Local Authorities in the region, Wolverhampton Council produced and hosted a public consultation.²³⁸ Moreover, the consultation was facilitated through the production of ‘An Easy Read Guide to Care Act easements in Wolverhampton: How local services may change because of Coronavirus and how it may impact you,’ following best practice in accessible communications.²³⁹ The guide set out the four stages outlined in the Government easement Guidance and explained how different stages would have consequent impacts upon service users. The consultation approach appears to have been well-received in the local community.

Local organisations and groups as well as carers and people with care and support needs and also employees participated. The vast majority agreed with the local approach to Care Act easements. Some comments included: “I consider this to have been thorough and well thought-through”; “The fact that Wolverhampton are consulting on this issue is exemplary. You put some of your near neighbours to shame.”²⁴⁰

In addition, a very detailed proposed Operating Model for Care Act easements was published in April 2020. This included a prioritisation tool and analysis of easements against the Ethical Framework in its appendices.²⁴¹

After this initial activity in which the decision was effectively made, there appears to be relatively little mention or scrutiny of “easements” or “flexibilities” throughout the year. However, it does appear that some changes to working practices occurred, such moving from face-to-face to online assessments, which had been defined by other Local Authorities as such. For example, the then Director of Adult Services briefed the Adults and Safer City Scrutiny Panel on 15th September 2020 that:

the changes introduced by the Care Act Easements to allow Adult Social Care Directors to make decisions in consultation with other interested parties if changes were needed to be made about how the service would meet its statutory responsibilities. The Director of Adult Services gave examples of how new technology has been used to complete care assessments.²⁴²

Indeed, the 2019-2020 Adult Social Care Annual Report states that

²³⁸ <https://consultation.wolverhampton.gov.uk/cwc/care-act-easement-procedure/>

²³⁹ https://consultation.wolverhampton.gov.uk/cwc/care-act-easement-procedure/user_uploads/care-act-easements-er.pdf

²⁴⁰ Principal Social Worker Annual Report 2020-2021 28th July 2021 at 3.7.

<https://wolverhampton.moderngov.co.uk/documents/s180203/Principal%20Social%20Worker%20Annual%20Report%202020-2021.pdf>

²⁴¹ Published April 2020, and shared at base of <https://consultation.wolverhampton.gov.uk/cwc/care-act-easement-procedure/>

²⁴² Adults and Safer City Scrutiny Committee. Minutes from meeting on 15 September 2020 at page 4.

<https://wolverhampton.moderngov.co.uk/documents/g11880/Printed%20minutes%2015th-Sep-2020%2018.00%20Adults%20and%20Safer%20City%20Scrutiny%20Panel.pdf?T=1>

Adult Social Care in the City of Wolverhampton Council has continued to operate under the Care Act throughout the pandemic, with some flexibilities and minor changes to the way work has been carried out and support / services provided. As such there has not been any need to implement any Care Act easements and the Council has remained at Stage 2. Most services have continued to be delivered as business as usual, whilst observing all government guidelines. Adult Social Care in Wolverhampton has adapted to working in creative and innovative ways that have enabled the people of Wolverhampton to be supported whilst also ensuring people are safeguarded.²⁴³

Ultimately, this council – along with many others – has interpreted the Guidance to mean that Stage 2 does not constitute the operation of easements: “The City of Wolverhampton Council’s approach was that Care Act easements should only be implemented as a last resort and only when all other options and alternatives, including utilising any other available resource, had been explored.”²⁴⁴

Incidentally, this council undertakes an annual Social Work Health Check, and the social work team reported a largely positive outlook on their first year in pandemic conditions, including with regard to “response to the pandemic,” while also acknowledging “an increase this year in the number of social workers who said that their workloads are not manageable and there has also been a rise in the number saying they are “just about” managing.”²⁴⁵

WORCESTERSHIRE COUNTY COUNCIL

Worcestershire is a council with a population of some 587,529 citizens.²⁴⁶ The council did put in place procedures regarding the initiation of Care Act easements. In the ‘Care Act Easements as a Result of Covid-19’ document for the Adult Care and Well Being Overview and Scrutiny Panel held on 15th March 2021, it was stated that:

5. At its meeting on 11 June 2020 the Panel {Adult Care and Well Being Overview and Scrutiny Panel} was first updated about the People and Communities Directorate response to COVID-19 for Adult Services and the Panel heard that at that stage the Directorate did not envisage needing to use easements although the future was not known. The Panel therefore agreed to maintain a watching brief.

10. A process for enacting the easements has been agreed with the Council’s Legal and Democratic Services. Delegated authority has been given to the Strategic Director to make decisions to enact the easements based on a recommendation from the Principal Social Worker. The decision must be informed by discussions with the Directorate Leadership

²⁴³ <https://www.wolverhampton.gov.uk/sites/default/files/2021-02/ASC-Local-Account-2019-20.pdf>,

presented to Cabinet on 17th February 2021:

<https://wolverhampton.moderngov.co.uk/documents/s164953/Cabinet%20Cover%20Report-Adult%20Social%20Care%20Annual%20Report%20The%20Local%20Account%202019-2020.pdf> at 12.3.

²⁴⁴ Operating Model for Care Act easements. April 2020, shared at base of

<https://consultation.wolverhampton.gov.uk/cwc/care-act-easement-procedure/> at 3.6.

²⁴⁵ <https://wolverhampton.moderngov.co.uk/documents/s167897/Adult%20Social%20Work%20Health%20Check%202020.pdf> at 3.13.

²⁴⁶ <https://app.powerbi.com/view?r=eyJrljoiYWZkNmM2ZDktMGFkOC00YjJlThhNjUtZDUxZTgyMDg3NjJiliwidCI6ImFjZiQxODg3LWJkMzctNDVhMy05ZTY1LTQ3Y2RlNDhkYzgz1YSIsImMiOjh9>

Team, the Lead Member and Clinical Commissioning Group leadership. The Health and Wellbeing Board will be kept fully informed.²⁴⁷

However, easements were not enacted. For example, it was stated in the documents for Cabinet on 4th June 2020 that:

14. The Council has not enacted any easements to the Care Act 2014, permitted under the Coronavirus Act 2020. It has put in place a robust review of demand for social care and capacity to respond, and this is reported weekly to the Directorate Leadership Team. The Council does not anticipate enacting any easements in the future.²⁴⁸

The role of collaboration with West Midlands ADASS was also emphasised:

40. Through work with West Midlands ADASS colleagues, we are ensuring that Worcestershire is fully involved in regional data sharing and collaboration, feeding in local information e.g. with regards to market management and provider support as well as ensuring regional and national information is shared and disseminated locally.²⁴⁹

As with other councils, day services were closed in the early stages of the pandemic. In the update to Cabinet on 25th June 2020 by Mr S E Geraghty, Relevant Chief Officer Chief Executive, the impact on day services due to Covid-19 was noted:

10. Discussions are taking place with externally commissioned day services in relation to a potential phased re-opening of services as national lockdown conditions are eased. While there is no current expectation that external day services should re-open, commissioners are working with providers on a service by service basis. Providers are being advised to carry out a thorough risk assessment for their service which will inform their decision-making. Individual risk assessments will also be needed, with social worker input, for adults and their families who may be considering a return to services.²⁵⁰

It was also clearly the case that service delivery had been impacted in other ways during this period. This includes similar issues highlighted by other councils regarding those who decided to decline services due to concerns regarding Covid-19 and including some provision of “alternative care arrangements”.

11. Commissioners are also working with other services areas and partner organisations to review the next phase of the COVID-19 response, and considering how commissioned services need to be organised to respond to future changes to work patterns, for example the embedding of a “7-day working” pattern.

²⁴⁷ Adult Care and Well Being Overview and Scrutiny Panel 15th March 2021 Care Act Easements as a Result of Covid-19 15th March 2021 at

<https://worcestershire.moderngov.co.uk/documents/s32534/Item%207%20Care%20Act%20Easements.pdf>

²⁴⁸ Agenda 4 Cabinet – 04 June 2020 COVID-19 Response

<https://worcestershire.moderngov.co.uk/documents/s25536/Cabinet%20COVID%20June%204%202020%20FINAL.pdf>

²⁴⁹ Ibid.

²⁵⁰ Agenda Item 4 Cabinet – 25 June 2020 ‘Covid- 19 Response and Restart Update Relevant Cabinet Member Mr S E Geraghty Relevant Chief Officer Chief Executive’ at

<https://worcestershire.moderngov.co.uk/documents/s25863/Cabinet%20paper%20COVID%20Initial%20Restart%20June%2025%206%202020%20Final.pdf>

12. All operational teams reviewed all people currently in receipt of care and support funded by the Council within the first 3 weeks. This identified those people who were considered to be at higher risk of carer breakdown or other pressures due to the withdrawal of services by providers, the loss of community support, the restrictions imposed by 'lockdown' or by virtue of being in the 'shielded' cohort. Any person who was considered at high risk has been offered weekly 'welfare check' calls.

13. Where a person requires additional support or a change in the way it is delivered, this has been provided. In some cases, people and their families have declined to use services due to understandable concerns about the risk of Covid-19 infection. Again, support has been provided to enable this to happen in the best way possible under the circumstances, including providing alternative care arrangements. All arrangements will be reviewed at the declared end of the pandemic.²⁵¹

There is further express reference to easements in the document for the Cabinet meeting of 25th June 2020:

16. To apply easements, the Council has to demonstrate that there has been either a significant impact on its workforce or a significant increase in demand, due to Covid-19. The Principal Social Worker has reported weekly to the designated Director of Adult Social Services on these. As neither of these scenarios have applied to Worcestershire County Council, no easements have been sought or applied and, based on current predictions, it is highly unlikely that any will be.²⁵²

The 'Update on the County Council's Covid-19 response' contained in the papers for Cabinet on the 22nd October 2020, as with the documentation produced by other councils, noted the on-going impact of social distancing requirements on the way in which services were provided:

33. The Council has financially supported its suppliers during the peak of the COVID-19 crisis, but the majority of this support has now ended. Council services are now having to adapt to a new way of supporting people, which meets the guidelines of social distancing and greater personal protection. Inevitably this brings about changes for customers, which they will need time to adapt to; e.g. buildings-based services can no longer admit as many people as before and remain Covid-19 safe. Services are therefore engaging with our customers to bring forward different opportunities for supporting them.²⁵³

Later in this document, it is stated that:

Urgent Care 45.

Adult Social Care continues to work in partnership with NHS colleagues to promote the "Home First" way of working to ensure we maximise people's opportunities to return home after a hospital admission. This is continuing to reduce the number of individuals entering long term Residential and Nursing care due to hospital acquired functional decline.

Adult Social Care 46.

²⁵¹ Ibid.

²⁵² Ibid.

²⁵³ <https://worcestershire.moderngov.co.uk/documents/g3171/Public%20reports%20pack%2022nd-Oct-2020%2010.00%20Cabinet.pdf?T=10>

Social work teams have seen an increase, over the last few weeks, in activity as people seek support following lockdown. Social Care staff are working proactively to ensure individuals access the care and support they need. Options in some areas remain limited due to the need for services to be Covid-19 safe but alternatives are being identified where possible.²⁵⁴

While Worcestershire did not enact the easements it is striking that the potential for them to be operated was kept under review, as noted in the 'Care Act Easements as a Result of Covid-19' document for the Adult Care and Well Being Overview and Scrutiny Panel March 2021:

13. As national lockdown is in place and there continues to be pressure on urgent care systems across the country due to the number of COVID-19 related admissions, a weekly assessment is completed to determine whether the threshold for the Care Act easements has been met. The assessment is based on the analysis of workforce and performance information and information provided by frontline teams. This is reported to the Directorate Leadership Team.
14. The current position in Worcestershire is that the threshold is not met.
15. The Directorate Leadership Team will continue to review the position in relation to the easements.²⁵⁵

Worcestershire is a council which expressly stated that it did not enact easements. It did expressly engage with easement processes in case it did need to enact them. In addition, due to the constraints of Covid, provision of services due to social distancing differed from pre-pandemic. Moreover, in Worcestershire the prospect of utilising Care Act easements clearly remained on the table as shown through weekly review meetings, noted as late as March 2021.

STOKE-ON-TRENT CITY COUNCIL

Stoke-on-Trent is both a city and a unitary authority area of Staffordshire. It has a population of approximately 256,129. There are high levels of socio-economic deprivation. It is one of the 20% most deprived districts/unitary authorities in England, where about 24% of children (12,660 as of 2019) live in low income families and life expectancy is lower than the England average.²⁵⁶ As of April 2020, there were "approximately 1,500 residents across the city receiving home care organised by the city council."²⁵⁷

The council did not formally adopt easements, and the publicly available minutes of council meetings and related reports during this period²⁵⁸ do not appear to make explicit reference to Care Act easements until December 2020, when the DASS explains that:

²⁵⁴ Ibid.

²⁵⁵ Adult Care and Well Being Overview and Scrutiny Panel 15th March 2021 Care Act Easements as a Result of Covid-19 15th March 2021;
<https://worcestershire.moderngov.co.uk/documents/s32534/Item%207%20Care%20Act%20Easements.pdf>

²⁵⁶ <https://fingertips.phe.org.uk/static-reports/health-profiles/2019/e06000021.html?area-name=stoke-on-trent>

²⁵⁷ https://www.stoke.gov.uk/news/article/596/care_for_your_city

²⁵⁸ See, for example, Local Outbreak Plan dated December 2020, which doesn't mention easements, but provides detail on PPE, social distancing, funding, etc.

Adult Social Care in-house provider services continue to operate as close to normal as possible whilst ensuring they services remain safe for our vulnerable citizens. The Director of Adult Social Services (DASS) meets fortnightly with the Assistant Director for Adult Social Care (Provider Services), the Principal Social Worker and a legal officer to consider whether the City Council needs to look for Care Act Easement. We have done this since the Pandemic started earlier in the year and we continue to be absolutely confident that we are operating at all times safely and within the Care Act and so do not need to seek any easement.²⁵⁹

In a Cabinet meeting on 21st April 2020, John Rouse, City Director presented a Covid-19 update. It outlined that by this stage, Stoke-on-Trent had “suffered less from this terrible virus than the majority of the country” and that the emergency was being managed under the Gold Command system.²⁶⁰ There is no mention of Care Act easements or changes to the regulatory framework for the sector, though he does list a series of changed working practices for both council staff and community providers. He commends “the exceptionally brave work of our front-line social care teams, including redeployed staff who have retrained to join the front-line.”²⁶¹ With regard to supporting vulnerable adults, there were extended working hours and a focus on hospital discharge:

Our Adult Social Care Teams have been working on a full 7 days a week basis, on an 0800-2000 basis for most services but 0700-2230 for some. Our key areas of focus have been supporting hospital discharge to the point where virtually every patient that could be discharged has been, to provide direct care and to support the independent care sector.²⁶²

He notes that many are still working out in the community, sometimes redeployed in new face-to-face roles as carers:

The domiciliary care companies we commission in the City are fragile but managing, and we support that market with our own enablement and maintenance team which has been supplemented by staff who have retrained as carers following redeployment from other services such as leisure and libraries. Our in-house enablement team are absolutely fundamental in keeping vulnerable adults safe in their own homes and they are very much in the forefront of the battle against this virus as they are out in the City every day providing personal care to hundreds of our residents in their own homes. We are hugely proud of the daily contribution they make to the lives of vulnerable people who in many cases see no one else all day long.²⁶³

Such changes might be considered to be “flexibilities” or “Stage 2 easements” in other Local Authority areas. By the Covid-19 Update of 21st July 2020, there is an indication that some social care work, specifically assessments, had in fact been undertaken virtually rather than face-to-face, though the plan was by then to find a way to return to “a near normal service”:

https://www.stoke.gov.uk/info/20095/coronavirus_covid19_closures_and_information/357/local_outbreak_plan

²⁵⁹ Covid-19 Update published 10th December 2020, supplementary papers, at 3.2.1,

<https://moderngov.stoke.gov.uk/mgConvert2Pdf.aspx?ID=28573&T=9>.

²⁶⁰ <https://moderngov.stoke.gov.uk/mgConvert2Pdf.aspx?ID=27650&T=9>

²⁶¹ Ibid. at 1.9.

²⁶² Ibid at 2.1.

²⁶³ Ibid. at 2.2.

The Adult Social Care and Public Health Teams have worked throughout the crisis as many provide front line services – where possible people have worked from home but the majority of staff have had to be at work some or all of the time. In fact, through Stoke Cares, we redeployed over 100 leisure staff into Adult Social Care roles to help bolster staff numbers and cover for colleagues off sick. Many services such as enablement, bereavement care, social care and others have maintained as near a normal service as possible. In many cases the recovery programme is simply about finding a way to return to face-to-face contact rather than virtual assessments – a good example being Occupational Therapy.²⁶⁴

Although not specific to social care provision, it is noted that managers monitoring capacity, that some services have been closed or paused, and that staff have been working from home:

We are collecting staffing registers on a daily basis which gives us a clear picture of capacity levels across the entire workforce. We worked closely with managers in the early stages of the lock down to make the necessary arrangements for as many employees as possible to work from home and this position is kept under constant review. Following the closure of services, we have trained and redeployed a number of employees into different roles in order to ensure that our critical front line services can be maintained.²⁶⁵

“Our greatest need and therefore our largest focus have been in relation to the requirement to ensure that we have sufficient staffing capacity in our enablement social care team” the response to which was redeployment of Council staff, as well as a #StokeCares recruitment and training programme to bolster the ranks of the social care workforce.²⁶⁶ It is also clear that Government Covid-19 funding was added to the budgets of local third sector groups for community support.

CARE ACT EASEMENTS DURING THE ‘SECOND WAVE’

It is striking that none of the higher-level easement Local Authorities listed on the CQC website, nor indeed any other councils, decided to operate Stage 3 or Stage 4 easements during the second wave of the pandemic. Did this mean that they were simply sufficiently well able to cope as they had adapted to remote working and the additional burdens created by pandemic conditions? Was staff illness and absence now less of a problem, despite the intensity of the second wave? It is certainly the case that the NHS in Birmingham was under extreme pressure in the winter of 2020.²⁶⁷

There is one interesting reference however in the minutes of a non-Stage 3/4 council, which sheds perhaps a different light on this. The minutes of a Worcestershire County Council Adult Care and Well Being Overview and Scrutiny Panel meeting on 15th March 2021 stated that:

²⁶⁴ Ibid. at 5.4.1.

²⁶⁵ Ibid. at 12.1.

²⁶⁶ Ibid. at 12.2; see also https://www.stoke.gov.uk/news/article/596/care_for_your_city

²⁶⁷ J. Hayes ‘Birmingham hospitals 'have more Covid patients than anywhere else in country’ Birmingham Mail, 20th November 2021. https://www.birminghammail.co.uk/news/midlands-news/birmingham-hospitals-have-more-covid-19317240?utm_source=twitter.com&utm_medium=social&utm_campaign=sharebar

11. In the first lockdown seven Local Authorities enacted the easements, five of these were within the West Midlands. Worcestershire County Council did not enact the easements. There are no local authorities currently listed as using the easements and this has been the case since 3 July 2020.

12. At a meeting of West Midlands Association of Directors of Adult Social Services on 14 January 2021 it was acknowledged that the process of enacting the easements during the first lockdown caused significant anxiety and distress to the public and would not be considered unless as a last resort.²⁶⁸

This statement that “the process of enacting easements caused significant anxiety and distress to the public” is notable as it does not appear to be something identified as a consequence of the easements in the public documentation issued or recorded by the other West Midlands councils. So, for example, in a report on 27th June 2020, Coventry’s DASS Pete Fahy, noted that:

6.4 For Local Authorities that activated the easements, Coventry included, there was a significant amount of scrutiny and challenge from national organisations and law firms. It is worth noting that none were able to identify any individual who has suffered detriment as a result of the easements and no complaints or challenges were made locally in this respect.²⁶⁹

²⁶⁸<https://worcestershire.moderngov.co.uk/documents/s32534/Item%207%20Care%20Act%20Easements.pdf>

²⁶⁹ Report by Peter Fahy on 27th July 2020 to meeting of the Coventry Health and Wellbeing Board, at 6.4.

VI 'IMPACTS' OF EASEMENTS

Complaints Processes

Work is still on-going to determine the impacts of easements generally across the UK. One way in which this could have potentially been ascertained is through standard complaints mechanisms which remain in place.

Complaints and escalation procedures remain the same as under the Care Act. In the first instance, these complaints should be raised with the local authority themselves. If the complaint cannot be resolved it can be escalated to the Local Government and Social Care Ombudsman, which has resumed normal service following a change in operation during the peak of the pandemic. Any feedback on social care can be shared through the Care Quality Commission's (CQC) feedback campaign, although it is important to note that CQC cannot take up complaints on behalf of an individual. Under the Coronavirus Act, once the emergency period has ended, if local authorities do not comply with their duty to carry out a relevant assessment within a reasonable period, action can be taken in court.²⁷⁰

In the event, it appears that fewer complaints regarding provision of social care were raised in the immediate months after the start of the pandemic. Interviews with stakeholders, including council staff, local Healthwatch leads, and the office of the Local Government and Social Care Ombudsman (LGO), suggest anecdotally that there was a drop in complainant numbers, driven by a mixture of stoicism, cultural narratives around coping with the pandemic and protecting services, and confusion around access to resources and contact. The LGO paused new casework from the end of March 2020 until 29th June in order to avoid adding to the already stretched workload of Local Authority teams.²⁷¹

We have not been able to access comprehensive data on the precise number and nature of complaints that were made against Local Authorities after March 2020 other than those escalated to the Ombudsman. There were fewer of these than in previously years, though a higher proportion (72%) found fault.²⁷² However, very few of the cases or decisions listed online by the LGO mention "Care Act easements" directly, though some from the period relate to the kinds of delays and disruptions to provision that may have occurred under either "flexibilities" or higher-level easements. Nonetheless, the LGO's annual review of complaints 2020-2021 highlighted "widening cracks" in local government complaint handling. According to Ombudsman Michael King:

We've been issuing our annual reviews for the past seven years now and, while every year has seen its challenges, this year seems to have been the most difficult for local authorities. While the way local authorities dealt with the pressures of COVID-19 is still being played out in our casework, early indications suggest it is only widening the cracks that were already there, and has deepened our concerns about the status of complaints services within

²⁷⁰ <https://www.gov.uk/government/publications/coronavirus-covid-19-changes-to-the-care-act-2014/care-act-easements-supporting-guidance> at Point 4.

²⁷¹ <https://www.lgo.org.uk/information-centre/news/2020/jun/ombudsman-to-resume-taking-new-complaints-online>.

²⁷² <https://www.lgo.org.uk/information-centre/news/2021/sep/failing-social-care-system-reflected-in-relentless-rise-in-ombudsman-s-upheld-complaints> published on 29th September 2021.

councils. These concerns are not new and cannot be wholly attributed to the trials of the pandemic.

I am concerned about the general erosion to the visibility, capacity, and status of complaint functions within councils.

Listening to public complaints is an essential part of a well-run and properly accountable local authority, committed to public engagement, learning, and improvement. I know the best councils still understand this and put local democracy and good complaints handling at the forefront of their services.²⁷³

The “relentless rise” in upheld complaints is viewed as symptomatic of a “failing social care system” rather than a spike due to the pressures of working during Covid-19; indeed “the pandemic intensified existing issues rather than created a raft of new ones.”²⁷⁴

Viewed through the lens of complaints from the public, and our impartial findings, the adult social care system is progressively failing to deliver for those who need it most.

Increasingly it is a system where exceptional and sometimes unorthodox measures are being deployed simply to balance the books – a reality we see frequently pleaded in their defence by the councils and care providers we investigate.²⁷⁵

Even where formal complaints may not have been made, survey data suggests that the pandemic and associated changes in provision have had a severe impact on many of those who draw on services. As previously noted, Mencap – the UK’s leading learning disability charity – had warned in August 2020 that “cuts to day services, personal care in the home and respite for carers have had a devastating impact on people with a learning disability and their families, leaving them still in lockdown despite the easing of official restrictions”:

Over two thirds (67%) of said their loved one’s needs have increased during the COVID-19 pandemic while four in five (79%) have had no choice but to increase the amount of care and support they offer.²⁷⁶

This bleak assessment echoed the findings of surveys undertaken by the National Office of Statistics,²⁷⁷ and has been confirmed more recently in research by the Health Foundation, King’s Fund, and Nuffield Trust.²⁷⁸

²⁷³ <https://www.lgo.org.uk/information-centre/news/2021/jul/ombudsman-annual-review-highlights-widening-cracks-in-council-complaints-systems> published on 28th July 2021.

²⁷⁴ <https://www.lgo.org.uk/information-centre/news/2021/sep/failing-social-care-system-reflected-in-relentless-rise-in-ombudsman-s-upheld-complaints> published on 29th September 2021.

²⁷⁵ Ibid.

²⁷⁶ <https://www.mencap.org.uk/press-release/i-dont-know-what-day-it-or-what-weather-outside-social-care-cuts-people-learning>

²⁷⁷ <https://www.ons.gov.uk/peoplepopulationandcommunity/healthandsocialcare/conditionsanddiseases/articles/morepeoplehavebeenhelpingothersoutsidetheirhouseholdthroughthecoronaviruscovid19lockdown/2020-07-09>

²⁷⁸ <https://www.kingsfund.org.uk/sites/default/files/2021-10/value-investing-social-care-briefing.pdf> at pages 2 and 5.

Monitoring and Stakeholder Research Findings

The DHSC – advised by the National Adult Social Care Covid-19 Group (NACG) and subsequently, from June to August 2020, by the Covid-19 Social Care Taskforce led by former President of ADASS Sir David Pearson reporting to the Minister of State for Care, then Helen Whatley MP²⁷⁹ – gave shared responsibility for oversight and monitoring of the use and impact of Care Act easements to the CQC, ADASS and TLAP, alongside the Chief Social Workers, each of which had anyway been involved in the key discussions around strategic and operational planning since the days of pandemic preparedness exercises.

In relation to the Care Act easements, the ‘Covid-19 Action Plan for Adult Social Care’ of 15th April 2020,²⁸⁰ stated that:

We will work in partnership with user and carer groups to understand the impact of COVID-19 and interventions such as Care Act easements to ensure they are not disproportionately disadvantaging those who are least able to advocate for themselves, and will closely monitor mortality and morbidity in vulnerable groups and the impact on carers. We will also hear directly from people with care and support needs about their experiences against the Making It Real ‘Statements’.²⁸¹

The Action Plan reiterated that the easements must only be used when “absolutely necessary” and then in accordance with the Guidance and the Ethical Framework.²⁸² The Guidance outlining the necessity of clear communication and solid record-keeping was re-stated with:

a clear expectation that any local authority decision to operate under the easements will be carefully considered, taken only as a last resort and well documented. Decisions should be fully communicated to care recipients and providers, and reported to the Department. This will enable us to keep an overview of use of the easements. The Secretary of State has a power to direct local authorities to comply with the Ethical Framework and the guidance if necessary.²⁸³

Monitoring by the Care Quality Commission

The Care Quality Commission was tasked by the DHSC with monitoring and sharing which Local Authorities had activated higher-level notifiable Care Act easements. According to the Government Guidance, updated on 29th June 2021, oversight was to be shared across several

²⁷⁹ <https://www.gov.uk/government/publications/social-care-sector-covid-19-support-taskforce-report-on-first-phase-of-covid-19-pandemic/social-care-sector-covid-19-support-taskforce-final-report-advice-and-recommendations>. “There was weekly reporting to the Taskforce Accountability Group with the Minister of State and there were updates and a particular focus in weekly meetings on social care with the Secretary of State.”

²⁸⁰ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/879639/covid-19-adult-social-care-action-plan.pdf, V1.

²⁸¹ Ibid. at 3.22. See also <https://www.thinklocalactpersonal.org.uk/makingitreal/>

²⁸² Ibid. at page 26.

²⁸³ Ibid. at page 27.

organisations which had been involved at various stages throughout the development of Care Act easements and the Supporting Guidance:

Work has been undertaken by TLAP, ADASS, CQC and partners to understand the impacts of the Care Act easements on individuals. Chief Social Workers have had conversations with Principal Social Workers to provide assurance that the guidance has been applied as intended, and to offer support if needed. TLAP and ADASS have had discussions with the local authorities who have operated under easements to consider the reasons for this and the impact on adults with care and support needs...

There is insufficient evidence to conclude that the easements have impacted on care and support. In order to build a person centred approach to monitoring care quality going forward, CQC have mapped Making It Real statements onto their 5 Key Questions...

CQC are working with providers to understand the impact of Care Act easements on them, to complement their Emergency Support Framework activities. This information will not be published.²⁸⁴

Indeed, as part of Pandemic Preparedness exercises in 2018, ADASS had recommended that the CQC take a monitoring and advisory role to support DASSs and social work teams in the event of a pandemic. This was a key recommendation for oversight in the event that Care Act easements might be implemented in future pandemic events:

During the peaks of a pandemic, CQC should support commissioners and providers in implementing the least worst options and decisions. CQC will wish to ensure that standards of care and regulated practice do not fall without good reason, that there are floors below which they should never fall and that they are raised again by providers as soon as their staffing and care dependency levels reasonably allow.

DASS and commissioner relationships with regional and local CQC inspectors and managers will be vital to manage any easements and monitor care quality in a controlled and measured way.

Support from CQC to make planned deviations from normal standards and practice will be vital for commissioners and providers to implement different ways of working.

Recommendation 3: DHSC and CQC should, as part of planning for a flu pandemic, consider the regulatory and standards easements identified in this document by DASSs and care providers and agree a process for consistent implementation, where relevant, within CQC, at national and local level.²⁸⁵

The CQC itself included oversight of the Care Act easements as an Action in its 'Coronavirus regulatory response: equality impact assessment' statement, though outcomes of this specific monitoring of provision was not to be published:

²⁸⁴ <https://www.gov.uk/government/publications/coronavirus-covid-19-changes-to-the-care-act-2014/care-act-easements-supporting-guidance>; see also TLAP's Making it Real.

<https://www.thinklocalactpersonal.org.uk/makingitreal/about/six-themes-of-making-it-real/workforce/>

²⁸⁵ <https://www.adass.org.uk/media/7887/flu-pandemic-easement-report-final-april-2018.pdf> at page 4.

Action 8 – Consider how CQC can monitor care quality to support providers and the care system to respond appropriately to Care Act easements in their care for older people maintain essential care quality and disabled people in our interim methodology.²⁸⁶

In the event, the names of those Local Authorities that had formally activated Stage 3 or 4 easements were listed publicly on the CQC website, with the proviso that:

When a local authority decides to use the easements, we will speak to them to understand the reasons for the decision. We will ask them what impact they expect on adult social care services in their area. We will use this information to help us prioritise our monitoring of providers.²⁸⁷

Nevertheless, according to the gov.uk website, the DHSC stated that there “is insufficient evidence to conclude that the easements have impacted on care and support.”²⁸⁸

Think Local Act Personal

As a partnership working to promote personalisation and community-based approaches to social care hosted in the Social Care Institute for Excellence Think Local Act Personal (TLAP) has been involved in discussions with the DHSC and other stakeholders throughout the immediate and ongoing response to the pandemic. As an organisation, they appear to hold a unique position, having the ear of the DHSC and representing the sector and those it serves. The TLAP Insight Group (TIG) was launched near the start of the pandemic to gather intelligence and views from across the sector. TIG’s membership was drawn from key organisations and professional bodies involved with social care provision, from ADASS and BASW, to Healthwatch and the CQC, and several others.²⁸⁹

Published in October 2020, TIG’s ‘A telling experience: understanding the impact of Covid-19 on people who access care and support – a rapid evidence review with recommendations’²⁹⁰ drew on insights from all the Group’s members, and focused on the experiences of those who directly access services, as well as carers and providers; it therefore used a mixture of methodologies. The Report notes the challenge of making a full assessment given that the “data varied tremendously in scope and depth, and it is important to note this variation and the impact this had on the subsequent analysis.”²⁹¹

The impact of Care Act easements was a key focus of the review, which found that:

feedback from work with Directors of Adult Social Services undertaken through the auspices of the TIG2 suggested that certain changes introduced by CAE [Care Act easements -

²⁸⁶ <https://www.cqc.org.uk/about-us/equality-human-rights/coronavirus-regulatory-response-equality-impact-assessment#hide14>

²⁸⁷ <https://www.cqc.org.uk/guidance-providers/adult-social-care/care-act-easements-it>

²⁸⁸ <https://www.gov.uk/government/publications/coronavirus-covid-19-changes-to-the-care-act-2014/care-act-easements-supporting-guidance> at Point 8.

²⁸⁹ Insight Group members listed here: <https://www.thinklocalactpersonal.org.uk/covid-19/tlap-insight-group/>

²⁹⁰ <https://www.thinklocalactpersonal.org.uk/assets/TLAP-TIG-report-on-Covid-19.pdf>

²⁹¹ Ibid. at page 7.

Explanation inserted by Report authors] councils were not noticeably different to the changes introduced by councils that did not introduce easements. This created a very grey line between CAE implementation and other local authority responses to Covid-19. There was some sense that CAE councils were unduly susceptible to criticism for triggering CAE when their actual practice was not substantially different to non-CAE councils. Indeed, Healthwatch also noted that some of the councils that enacted easements seemed to do so in preparation of potential capacity issues, which then didn't always materialise.²⁹²

Again, paucity of real-time monitoring and data gathering made it difficult to identify whether issues were directly caused by the implementation of easements:

The rapid evidence review was inevitably not comprehensive, in that it did not capture the experience of everyone accessing care and support during the early phase of the pandemic. Nor did it answer questions around the extent to which people were impacted by CAE in those areas where councils 'switched on' the easements. Neither does it build up a consistent picture of community support during the crisis and how, and to what extent, this helped fill any gaps in regular care and support.²⁹³

There was little data which sought to explore the specific impacts of CAE on people who accessed care and support, but the pieces that did highlighted the difficulties of attributing change to CAE directly, as opposed to the wider impact of Covid-19. For example, In Control's Be Human register (interim report) found that 29 respondents cited CAE as reasons for changes to their care and support, whilst only three of those respondents actually lived in CAE areas.²⁹⁴

The main recommendations in the Report included among others: better ongoing collaborative work between key stakeholders in the nine regions [primarily ADASS]; clear, timely and accessible guidance for the public; further research into the implementation and impact of the Care Act easements; a focus on co-production at DHSC and local levels; addressing inequalities; and increasing support for carers.²⁹⁵ The report also concluded that

the pandemic – and the government response to it – disrupted routines, removed taken for granted freedoms, and unleashed uncertainty about the future. This was undoubtedly an anxious – if not frightening – time for everybody, but it specifically impacted upon those who accessed care and support and the people who provided the care.²⁹⁶

Association of Directors of Adult Social Services (ADASS)

The ADASS 'Themes and Learning from ADASS Members on the Local Response to COVID-19 in Spring and Early Summer 2020' was published in October 2020. Co-authored by then ADASS President James Bullion and TLAP Chair Clenton Farquharson, it drew on the intelligence shared within the TLAP TIG Group and a number of interviews with DASSs in those Local

²⁹² Ibid. at page 8.

²⁹³ Ibid. at page 23.

²⁹⁴ Ibid. at page 9.

²⁹⁵ Ibid, full recommendations, with sources of advice at pages 24-30.

²⁹⁶ Ibid. at page 23.

Authorities which operated Care Act easements and a small selection which did not.²⁹⁷ One of the key findings, echoed in our own research, was that “[M]any of the approaches used by councils that did not operate the easements were similar to those used by councils that did.”²⁹⁸

It is particularly interesting to read this Report mindful of ADASS’ input into the recommendations on the potential introduction of legislative easements for the 2018 Pandemic Flu exercise.²⁹⁹ In addition to the comparative data from the eight councils that operated under easements and five councils that did not, the ADASS Report identifies 44 points of learning for sharing with Government and at local and regional level.

Some of these are indicative of the difficulty and complexity of decision-making in the uniquely stressful conditions of April 2020, and are clearly echoed in the findings of our own research. However, some points are based on conclusions that run somewhat contrary to what we found in the grey literature from West Midlands councils and indeed from the interviews we undertook; for example:

26. Non-easements councils who contributed to this report had lower infection rates and were therefore operating in less of a crisis during the early weeks of the pandemic. This enabled them to have more time available to achieve more clarity in describing the triggers that would require easements to be declared and therefore achieve more clarity.³⁰⁰

And

30. The councils who did not operate the easements were not faced with an immediate crisis, and were therefore able to use more time to consider the local situation, and to take a slightly more measured approach. They had the comfort of being able to prepare first and then, if and when easements were needed, they had agreed approaches to move into operating them.³⁰¹

Some Local Authorities that we examined were facing higher than national average infection and death rates (as well as higher levels of baseline socio-economic deprivation and health inequalities) during the first wave,³⁰² yet still managed to carry out strategic planning and/or even some level of consultation before announcing the decision not to activate formal easements. More crucially, it appears that several of these ‘non-easement councils’ were actually operating “flexibilities” at Stage 2 in the Guidance, and sometimes described these as “easements” in their documentation. Conversely, some of the Local Authorities that did formally activate easements, did so very quickly.

²⁹⁷ <https://www.adass.org.uk/media/8265/themes-and-learning-from-adass-members-on-the-local-response-to-covid-19-in-spring-and-early-summer-2020-041120.pdf>

²⁹⁸ Ibid at 22, page 7.

²⁹⁹ <https://www.adass.org.uk/media/7886/guidance-for-dasss-planning-for-pandemic-flu-final-april-2018.pdf> at page 28.

³⁰⁰ <https://www.adass.org.uk/media/8265/themes-and-learning-from-adass-members-on-the-local-response-to-covid-19-in-spring-and-early-summer-2020-041120.pdf> at page 8.

³⁰¹ Ibid.

³⁰² <https://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/deaths/bulletins/deathsinvolvingcovid19bylocalareasanddeprivation/deathsoccurringbetween1marchand17april> at section 4 and 5.

The approach recommended in the ADASS Report's 'Learning for Sharing' section, which suggests that Councils should prepare in every possible way and hold off as long as possible before activating easements "at the last possible moment."

31. If possible, prepare first. Agree the monitoring, triggers and governance systems, risk assessment approaches for individuals with care and support needs and then switch on easements at the last possible moment "when the house is on fire".³⁰³

Part of this preparation should involve extensive consultation with local stakeholders:

32. Talk to local stakeholders – council colleagues, members, H&WB Board, local disability organisations, NHS colleagues, Healthwatch, front-line staff – early – get buy in and consistency in messaging. Share the messaging, reasons, risks of not taking action and the communications. Use as many channels as possible to get the message out (local press, TV, charity newsletters and bulletins).³⁰⁴

Yet there are conflicting messages on the need for greater levels of consultation and communication, perhaps due to the strain between ideal best practice approaches and what is considered possible or reasonable when operating in "fire-fighting" mode:

66. In times of real crisis, when local leaders are already fire-fighting, there should be a clear principle of "No surprises" and minimal requests for unnecessary additional reporting. In relation to the Care Act Easements the expectation on local authorities to widely consult with stakeholders was not realistic given the unprecedented nature of the Pandemic and the need to act swiftly and decisively.³⁰⁵

Yet, although such consultation and communication activities are burdensome and "not realistic," they are also "crucial":

69. Consultation and communications at a local level is crucial. Some national work was undertaken which would have been much better done at a local level. Some local systems were over-ridden by requirements to use national communications and then reverted to local management. Some regions had sophisticated data and intelligence systems that were over-ridden by national requirements. The sector needs national frameworks and permissions, which support local implementation and prioritisation. National messaging is required for the public and stakeholders to support the sector at a local and regional level.³⁰⁶

However, the latter part of Point 69 – on the need for clearer national frameworks and permissions that support local implementation and priorities – was clearly echoed in our own stakeholder interviews. Lack of clear and timely messaging from Government was a recurrent complaint at local level. Interestingly, there is some suggestion that certain Local Authorities may have avoided engaging with the easement provision and Guidance, either due to a perception of additional work, or due to fear of negative repercussions.

³⁰³ Ibid. at page 8.

³⁰⁴ Ibid. at page 8.

³⁰⁵ Ibid. at page 13.

³⁰⁶ Ibid. at page 13.

72. Given the difficulties in implementing the requirements of the national guidance, at speed and in a crisis situation, it has been suggested that some areas may not even have tried to progress the Care Act easements because it was too difficult and the perceived risk of a 'process-related' legal challenge or political difficulty was seen as too great. This leaves a risk that some could have been operating easements informally.³⁰⁷

Some of our interviews echoed the concerns about increased administrative load and certainly some of those that did formally activate easements felt strongly the effects of "political difficulty," both internally and from outside. However, some of the Local Authorities we examined produced little to no information on Care Act easements, yet the minutes from their Cabinet and Committee meetings suggest that they were at the very least operating under stage 2 'flexibilities'.

As a result of all this

73. There is a residual sense of injustice. DASSs who implemented the easements felt obliged to keep explaining themselves and justify their actions, even after they had done all that was asked of them in the guidance, with a genuine intent to be transparent. Some questioned why the reaction was so different from the reaction to NHS acute hospital service cancellations? Associated with this was a sense that despite the government department overseeing adult social care being the Department of Health and Social Care (DHSC), that department was perceived as overly focused on the NHS, and within that, "hospital-centric", to the exclusion of the wider health and care system, and that this contributed to a lack of public understanding of the wider system, and adult social care, in particular.³⁰⁸

Elsewhere the Report's co-author, James Bullion, who was President of ADASS through the first wave of the pandemic, noted the lag in support and direction for social care, relative to the focus on protecting the NHS, stating that: "the government did things later for social care always meant that you were on the backfoot," so that "Social care workers were made to feel like an afterthought, they felt this unequal status with the NHS."³⁰⁹ Indeed, despite ADASS' crucial role in advising the DHSC, the command system wasn't always effective: "local works when you get the national framework," he said; but "[W]hen you don't get the national framework right, not even 'local' can compensate for that."

We have asked ourselves, 'how could we have better conveyed that those policies were simply not going to work and you needed to do that locally?' To get that message across a lot quicker, so we didn't end up going around a loop.³¹⁰

Many, though not all, of the findings, suggestions and learning from this ADASS Report have been echoed in the data gathered during our own stakeholder interviews, including those with DASSs. However as noted earlier in combination with examination of grey literature such as announcements on council websites, minutes of meetings, and documents produced by third sector organisations, our research team identified three (rather than two) distinct

³⁰⁷ Ibid. at page 14.

³⁰⁸ Ibid. at page 14.

³⁰⁹ <https://www.lgcplus.com/services/health-and-care/bullion-social-care-felt-like-an-afterthought-during-crisis-28-04-2021/>

³¹⁰ Ibid.

categories of easements-related council actions in the West Midlands region, plus the anomalous case of Dudley Metropolitan Borough Council.

The following section of the Report gives voice to some of the key experiences, issues, and concerns raised during the course of our interviews.

VII. REFLECTIONS FROM STAKEHOLDERS

In this section of our Report, we draw upon the reflections of a range of stakeholders whom we interviewed across West Midlands Local Authorities and third sector organisations, both at national level and from the region, to highlight their experiences around the implementation of higher-level Care Act easements; operating under Stage 2 easements/flexibilities; or conversely, the decision not to implement easements.

During the research, all the Local Authorities which formally implemented Stage 3 or Stage 4 easements were approached, along with a selection of other Authorities across the region. All but one of the Local Authorities which formally activated higher-level easements agreed to speak with us. In order to try and understand how Care Act easements might impact different work streams and aspects of community life, we interviewed a range of DASSs, PSWs, Local Resilience Leads, and Community Assurance Leads using snowballing. We also undertook interviews with stakeholders working in third sector organisations at local, regional, and national levels. One interview with one higher-level easement Local Authority was undertaken in collaboration with two other on-going related research projects from Kings College London³¹¹ and the University of Manchester.³¹² To date we have undertaken over 40 interviews, though the research is ongoing.

The interviews were undertaken following research ethics approval from the University of Birmingham Humanities and Social Science Ethical Review Committee. The project also received endorsement from Association of Directors of Adult Social Services. Where relevant, in relation to Local Authority interviews, the requisite Research Governance approvals were also obtained directly from specific Local Authorities.

INITIAL THOUGHTS ON EASEMENTS

The first issue... was the use of the word “easement,” which threw everybody because when it comes to Land Law it has an entirely different meaning. Where have you come up with this phrase? If you were scanning the legislation, at first glance it was quite easy to miss. Because if somebody said to me “We’re going to bring in easements,” from my legal perspective... it would be that the Department of Health was going to give local authorities a path in terms of the actual framework that they had to follow in order to make it easier to talk to people during the pandemic... The notion that people’s statutory rights were just suddenly suspended is certainly something that I’ve never come across before and the reason I used the word “rushed” was [because] it certainly, from our perspective, didn’t seem to be something that Local Authorities were aware was going to be considered. From our perspective, it was mass

³¹¹ M. Baginsky, J. Manthorpe and E. Thomas: “The Operation of Easements under the Coronavirus Act 2020 to England’s Care Act 2014” at <https://www.kcl.ac.uk/research/easements-to-the-care-act>

³¹² P. Drake, D. Price, N. Allen, J. Astbury: “The impact of Care Act Easements under the Coronavirus Act 2020 on co-resident older carers of partners with dementia” at <https://fundingawards.nihr.ac.uk/award/NIHR202259>

confusion from Local Authorities in understanding what the easement process actually meant to them and how would they enforce it. (Social Care Advocacy Organisation)

It's actually almost worse to put something in place and then take it away than it is to not have put it there in the first place. So when you raise people's expectations by providing a service and then you use something like Care Act easements to take that away, it's greater than if you'd not done it in the first place. (Healthwatch Lead in a West Midlands Local Authority that formally activated easements)

I would be interested to know if that wording ["easements"] was lifted from the draft that they'd had, because it seemed like it had been hastily written. And it may not be possible – you know, "unprecedented times" and all of that – but given that work has been done on pandemic preparedness before, they've got very smart lawyers working in Government departments and they must have known that using words like "acute," for example, would just throw up a whole load of questions with public law, immediately.

I think at the very least, it was a massive mistake not to have some sort of guidance or at least a really basic letter sent out immediately with that [the announcement of the Coronavirus Act], to Local Authorities but also to individuals who receive the social care because I can only imagine how scary that must have been in the early days of the pandemic- living with someone who was relying on social care provision, particularly in your own home and you got any whiff of the fact that Local Authorities might not have to provide social care, which is how it was being seen... there's also something about fundamentally, ethically- is that the right thing to do if we've got years to prepare for this type of pandemic? Is it the right thing to do to say "unless you have an emergency acute need for support within this time, you are okay as you are"? Do we wait for people to slide down that scale, to then access support? So, for me, the question of "Okay, we'll suspend [assessments or reviews]": whilst I have a lot of sympathy with workforce depletion... [that support] will give this person a good quality of life, without waiting for them to slide down the scale and become an emergency. (Social Care Advocacy Organisation)

It was passed really, really quickly. Just the whole range of actions that were obviously done at speed... but were done through a kind of narrow prism which meant that they had consequences on other people.

There were some groups that were involved in drafting the Guidance, I think. We weren't. The first thing we did was work with something called the Disability Charities Consortium, before the Act was passed, to write to parliamentarians basically saying that they shouldn't pass anything that diminished the rights of disabled people. (Policy Lead at a national Disabled People's Organisation)

CONSULTATION AND AWARENESS OF EASEMENTS

I heard third hand that we were moving to Care Act easements, which I was really annoyed about, because we do the statutory carers assessments. I had to ask- "If this is the case, can you advise if there's any implications for carers that we need to be aware of?" You know, we carry our statutory carers assessments and we're still doing that. We're also taking a greater focus on wellbeing checks, along with safe and well checks- does this remain the right approach? And then secondly, support plans and care packages for the cared for, with a

specific pinch point with hospital discharge- how should we be advising carers that may be critically involved?

But I heard third hand. I had to write to them and say "Look, we're doing these carers assessments- What does it mean? How do we play this through?" I asked them about it; they didn't tell me. Yet I'm fulfilling a statutory function of carers assessments, it has an impact on that. I said, "Are you enacting them? And what's the impact for us?" But I had to ask, and this is where I'm saying they were in a tail-spin, but we were just getting on with it, and it took them quite a few months to sort themselves out... They are a big organisation and it took them a while to adjust to what needed to be done, whilst the voluntary sector could adjust a lot quicker. (CEO of a carers support organisation in the West Midlands)

There wasn't any consultation or any discussion that the council were enacting easements. I heard it from a third party who told me where I could go to find the information to confirm that. And with no disrespect to the Local Authority, it was deeply hidden on their website. You have to be able to navigate through what is a very complicated website anyway to actually find the fact that the Local Authority had gone down the route of easement.

There was no announcement, and I think that was one of the bits that took us by surprise- that the decision had obviously been taken at director level, I suspect, and then out to the cabinet that the city might need to suspend some services. But I think it's genuinely fair to say that that was not communicated either to the people likely to be affected by it- the users of services and it certainly wasn't advised to us, and I think it came as quite a shock.

And though we asked the council what this meant, we got a pretty standard Local Authority response that it was "just a provision, just in case." And I think the problem with it was nobody really knew what it meant, because it's not something that's previously been part of the behaviour of the Local Authority. But I think it was also very difficult to communicate what was potentially a significant risk to service users and families of services being affected by easement. And of course, that was also counted against the fact that from the Local Authority's perspective nearly all of their local community services, including social work, had basically withdrawn. It was very, very difficult- all the day centres were shut, all of the basic amenities that people were used to relying on. And the social work function effectively withdrew behind their Covid protocol, so there was a significant sense of isolation and I think genuine concern that people would find their care and support packages cut. Obviously, the Local Authority was in significant financial dire straits before Covid. (CEO of a major learning disabilities charity in the West Midlands)

That decision was taken very quickly... And that was done behind closed doors without any engagement, not even involvement. Actually there was no communication around it either. The result of that meant that health and local authority moved into the different pathways, with no sign of having supported organisations within the same system who were completely unaware that the pathways had changed. And therefore there was a lack of understanding not only from the community perspective, but also from partners within the voluntary sector as well around "What do Care Act easements mean for us? What does that mean our own roles in terms of organisations? Or what does that mean for our community members who have been discharged from hospital?" So, though it happened quickly, we had no comms or engagement around it which caused quite a bit of confusion, especially with partners who actually support older people or people with learning disabilities, for example. (Healthwatch Lead in a West Midlands Local Authority that formally activated easements)

RATIONALES FOR THE DECISION TO IMPLEMENT EASEMENTS

...we saw the easements come through. We looked at what they were. When we were really worried that the market was probably going to have a serious problem delivering care to people. Mainly, the sickness absence rates looked to be going up in the private sector, as well as our own reablement service. We thought we were going to potentially look to use Stage 4 of the easements, that we might have to think about moving care from some people to cover safety issues.

So I think our initial conversation around that, and certainly my thinking as the PSW, was that this is contingency planning. This is us being ahead of what we think may happen. I saw the easements as something that we could have in place and use as necessary. Later, when there seemed to be a growing questioning of the use of easements, and when it surprised me that most local authorities weren't using easements, it was clear that other people viewed them very much as a reactive thing. In the press, in the Community Care articles, etc. they were described as if: "If you're using easements, God, your local authority must be in a right state, not able to do stuff." [But] I'd certainly seen them as a proactive thing. (Principal Social Worker in a West Midlands Authority that formally activated easements)

When I actually read them [the easements documents] we had a Principal Social Worker regional meeting. In the Midlands we have very close Principal Social Worker regional group and we communicate very well, and had regular meetings during the pandemic; we were actually meeting very frequently as well as a Principal Social Worker regional team, and because we are very well organised- that's been commented across the country that we are a very well organised regional team - and we were talking very much about easements, and where we were at, and what positions we were in, and breaking down what the guidance actually was. And I do feel that we got a bit stung as a region, actually following the guidance as it should have been. (Principal Social Worker in a West Midlands Authority that formally activated easements)

I think the internal processes we went through got us to a position where we had officer permission to act and critical cover and a cabinet decision, so internal governance-wise I think it worked quite well. The problem was all of the external correspondence that it generated, actually. One of the reflections from the whole pandemic was that this is a national emergency that was never a national emergency. (Director of Adult Services in a West Midlands Authority that formally activated easements)

We have a really strong regional group that did the right thing, and we all discussed it regularly and everyone seemed to be, in our regional group which is a strong group and a well-established group. People were thinking: "Do you think we should do it? Should we do it? Where are we at?" When we'd have the discussions and we'd say "I think you really are at a 2, not at this stage." And someone would say, "I think we need to own why we're enacting 3; let's discuss it." And it was a safe environment, and we'd have those discussions and I think every single team there enacted the right level of easements for their Authority, and I don't think anyone else was that strong, so we all did it together. I think we all went out and then enacted them together at a very similar time, because we all knew we had to because of the law. And then we felt very much on our own after that... (Principal Social Worker in a West Midlands Authority that formally activated easements)

THE IMPACT OF EXTERNAL SCRUTINY

Care Act easements were seen as something which were designed to relieve pressure on the provision of services. At the same time, their implementation seems to have brought its own pressures. Those Local Authorities which utilised higher-level Stage 3 and Stage 4 easements came under considerable pressure and challenge.

As noted above, Freedom of Information requests (FOIs) were brought by campaigning groups against all those Local Authorities implementing higher-level easements. This in turn was seen as problematic by some of our interviewees, not least as a distraction from the emergency response in the early months of the pandemic.

... the amount of capacity that was being taken up by senior leaders in responding to letters, Freedom of Information requests, and all those other things around the easement meant that I think we got to the point quite quickly [that we] felt "this just isn't worth it. Actually, the benefits we're getting are far outweighed by the noise" and I have to say that all of that came from outside the county. (Director of Adults Services in a West Midlands Local Authority that formally activated easements)

We were very transparent about it, as a consequence of which we then found ourselves on a Department of Health list and subject to hostile briefings. So some civil servants went to various advocacy agencies and media outlets and said: "Isn't it disgraceful what these local authorities are doing and it will affect the care of the most vulnerable." And all of that sort of stuff. So, we then spent the next 6 to 9 months answering all sorts of freedom of information requests, letters from all sorts of advocacy groups, from "Outraged"- and none of these were our residents. It left us feeling just a bit bruised really, and it was all a bit unnecessary. (Director of Adults Services in a West Midlands Local Authority that formally activated easements)

FOI requests are a nightmare. You know, when they come in, it is hours and hours and hours of people's time to no great benefit to anybody. (Director of Adults Services in a West Midlands Local Authority that formally activated easements)

We certainly struggled reputationally, I think, from the fact that there were a number of articles written, and a number of letters that identified what stage four easements meant... We had to spend a lot of time rebutting [this] and explaining what the stages of the easements meant and what we were doing. (Director of Adults Services in a West Midlands Local Authority that formally activated easements)

As noted, professional networks were holding more frequent meetings at both national and regional levels in the early months of the pandemic. This enabled those responsible for decision-making around activation and implementation of Care Act easements – Directors of Adult Services and Principal Social Workers – to discuss strategy, trigger points, and so on. They also eventually provided a point of comparison with approaches taken by other Local Authorities.

We didn't do a lot of triangulation. I mean arguably perhaps we ought to have done [...] but we did not come together and say, "We're declaring easements." Each Local Authority did it and then we sort of understood it post hoc...

I think we would argue that at the time we followed the letter of the law, so the letter of the law said that if you change things that are not strictly Care Act compliant you have to declare it as an easement. Most local authorities did something similar but without declaring it. So we possibly made life more difficult for ourselves than we needed to, frankly. And, yes, if we were facing a similar situation again, we might well see what we could do under the radar, rather than making it legally overt. (Director of Adults Services in a West Midlands Local Authority that formally activated easements)

Our directors [of Adult Services] had quickly checked with each other what they were doing or planning to do, via rapid emails. "Where's your thinking on this?" and so forth. One of two directors were thinking of erring on the side of declaring or seeking to declare with their CEOs and political leaders, stage three or four or whatever... But it led to a position where CQC published out of the seven local authorities listed on their website – this was the end of April, early May – as applying Care Act easements, and I think that was either stage three or four. Four being the most extreme. Five of those were from the West Midlands...

And then after the event, the event being publication on the CQC website, I think the relevant directors were surprised, not only for the national attention they were getting, but actually more importantly from the local attention. And it created a lot of fuss and admin and so forth...

So, I think the easements process was pushed through parliament with all good intent to get that balance right between, having to respond practically and effectively to an emergency, whilst ensuring service user and carer needs, human rights, needs, expectations, safety, etc. were respected. Making sure that the Care Act 2014, the main bits, the principles of it, were still sound and followed. But on the other hand, there was the balance of the emergencies and the contingencies and the need to shift capacity and scarce resources around due to the pandemic. But I think it was a bit of a rough stick to control it with. And because of the urgency of it, it wasn't really thought through well enough – some of the unintended consequences of doing it. (ADASS Associate)

My conversations with PSWs were in the West Midlands with others thinking of doing it... Email exchanges about what you're doing, and how you're doing it, etc. And then it was almost like, once we'd done it and we looked around and nobody else in the country was doing it, it felt like – "Oh, okay; that's interesting." Yeah, very interesting experience. (Principal Social Worker in a West Midlands Local Authority that formally activated easements)

RATIONALES FOR THE DECISION NOT TO IMPLEMENT EASEMENTS

... [we were assessing] what kind of scenarios we might come across, and what we would need to do to mitigate having to move into stage 3 or 4 of easements. And I worked with OT, I worked with Public Health, across loads of council really to see what we could do. [...] Because from my point of view I think my worst nightmare would be to implement easements – especially stage 4 – when you're looking at prioritising people's needs.

I think that from a social work perspective, a value base, how would you prioritise people's needs? And how could you say "You deserve to get care and support but then you don't"? And it just felt like a hugely difficult position that I just didn't want to be in. So, I think from my perspective I wanted to work as hard as I could in order to put everything in place where people continued to have the care and support they needed, and we put all our commitments, our energies, and our finance in place... And the council were very behind us with that. From our point of view, we didn't want to do it unless we had no choice. Unless it was a last resort. (Principal Social Worker in a West Midlands Local Authority that did not activate easements)

...when I talk about going into easements, I'm really talking about triggering stage 3 and stage 4. So we didn't want to go anywhere near easements... Actually we didn't think that easements were going to solve any of our problems... It was holding. It allows you to not do the work but when you come out of easements, guess what? All that work's going to be there waiting to be done. Our view was that it was something we really wanted to work very, very hard to avoid, and not least because it caused concern and anxiety to the people who are receiving service. We didn't want you to add to people's woes mid-pandemic.

So we started working very proactively from home. Which meant that we were far less likely to contract the virus and to spread the virus in our work. We kept records, we had a daily record which showed how many people were off sick and where the absences were and how many people had Covid... we started working and using technology in a very different way and trying to minimise the amount of face-to-face visits. We provided guidance on when face-to-face visits took place and what to do during face-to-face visits. Doing that sort of mitigated the need to relax some of those duties which relate to the work which we do. (Principal Social Worker in a West Midlands Local Authority that did not activate easements)

That decision not to use easements went through, and it was reviewed every week for the best part of a year. [...] We looked at a range of figures. We looked at our staffing levels. We also had data from the HR systems. But also our managers came, our service managers. So we looked at soft data as well from the service manager's knowledge of our service area. We said to them what's happening in your service, tell us about what you know, what your team manager is saying, because data is only the beginning of a conversation.

We have the market capacity tracker, which we looked at as well, which gave us information about vacancies in residential nursing care, Covid beds and domiciliary markets. We had information from the business team around finance and financial assessments. We looked at that as well and just saw if there was any delay on financial assessments. We looked at other market information, such as the capacity of our own enablement team. [...] We looked at demand coming into the service. We had a RAG rating system.

We had a method of trying to explain how we reached the conclusion that we didn't need to go into easements or we didn't need to do anything further. Pretty much even through the second wave, when we sat down and looked at the figures before us, we largely came out to as green.

But we certainly didn't think we're anywhere near level 3 or level 4. We had capacity in the market. We had vacancies in the care home, we had staff in work. We did have some high demand in the hospital discharge team, but we were managing that and finding a way to work with that. So we were moving resources a little bit to work with it. We just felt that we weren't going there, we didn't want to go there. (Principal Social Worker in a West Midlands Local Authority that did not activate easements)

Ultimately, as it turned out, many Local Authorities then realised that it was going to be hard work to implement the Care Act easements. It was striking a balance. Do we really want to go down that road? Because it's a lot of work. (Chair of the BASW England Adults social work group)

ON THE OPERATION OF SERVICES

Despite the regularity and intensity of professional network meetings – at both national and regional levels - the decision to activate or not to activate easements was made primarily at officer level, and the process varied from council to council. While each faced some shared challenges during the pandemic, different approaches were taken to mitigating the stresses on social care provision. In the end, only eight councils formally notified higher-level easements (at stages 3 or 4), yet they observed that other councils that had not done so were effectively behaving in similar ways.

While many councils appeared pleased and relieved that they had not formally activated easements, there was some expressions of scepticism and regret expressed from those which had.

The pace was incredible really and I think it created an environment of organised chaos in the sense that I was asked by the Council and VSC to try to coordinate the... information going in and out of the city. So that was quite a stressful place to be to begin with... I think it took the Local Authority quite some time to reorganise itself. I mean it's a huge organisation, like turning an oil tanker in a bathroom. I think the officers and politicians did everything they could to help. I think in those early days the sector, the citizens, and families were quite exposed to begin with. I think everybody was trying to reorganise, a lot of organisations and agencies had been dispersed to home working. (CEO of a major learning disabilities charity in the West Midlands)

We know from conversations around the region and nationally that most local authorities made some sort of adjustment or another that you could quite easily interpret as, strictly speaking, a derangement from the Care Act, and therefore they should have declared an easement. But they didn't, they just sort of kind of got on with it. (Director of Adult Services in a West Midlands Local Authority that formally activated easements)

I talked to a colleague, somebody I used to work with at another Local Authority, who phoned me to see how I was because he'd heard we'd used the easements and [assumed] things must be really bad. And I said, "No, we're doing really well." And I know for a fact that they were doing the same things as us, in terms of not doing reviews, etc., Those kinds of things. (Principal Social Worker in a West Midlands Local Authority that formally activated easements)

Random scattergun right across the country... I could find no pattern or rationale; it was literally, I think, word of mouth. So there were some people who just said "This is due to easements" and sort of quoted that when actually there were no easements. And when you went further up the ranks, they would say "No," and the senior managers would confirm there weren't. So it was almost as if there were some frontline workers who... used it as an excuse. But that's the way it was. It was almost as if they used it as an excuse instead of

saying “Things are really difficult in Covid at the moment and I am going to be delayed.” The easements were used as a reason. (Principal Social Worker in a West Midlands Local Authority that formally activated easements)

CLARITY OF THE GUIDANCE AND THE RELATIONSHIP BETWEEN THE DIFFERENT STAGES OF EASEMENTS

I think stage 2 is a grey area. We never really came to the conclusion that we're in stage 2... I mean, we did do things differently. So daycentres, for example, shut down. Therefore, we had to think differently about how we provided somebody with support during the daytime. So does that mean we're in stage 2? But we never officially went to stage 2. (Principal Social Worker in a West Midlands Local Authority that did not activate easements)

The Guidance put the onus on Local Authorities to communicate clearly with the public about their approach to social care provision during the pandemic, as indeed it is obliged to do under the Care Act in normal times. There was an additional directive to communicate directly with service users and providers about any changes that might occur under Care Act easements.

Notably, across the grey literature and indeed in council announcements and minutes, there was a degree of inconsistency in the terminology used to describe both easements and flexibilities within the pre-amendment Care Act. This was particularly the case where councils were ostensibly operating at Stage 2, and were not clear whether or not this constituted an ‘easement’ or a ‘flexibility’ within the pre-amendment Care Act.

Some councils did not make use of the term ‘easements’ at all in their external communications, even – in one case – where the council was operating formally notifiable higher-level easements. Our data suggests that some councils that formally activated higher-level easements, carefully following the Guidance, later questioned whether this had in fact been useful.

I guess even Care Act easements, what the government could have said that would have made it quite easy was words to the effect of nationally: “Don’t worry about the precise details of the Care Act right now; if you have to deviate from them a bit, it’s okay.” ... it could’ve made a sort of general derogation, couldn’t it? “As long as you are acting reasonably and proportionality in all of that, etc.” Rather than having the level 1, level 2, rather than nit-picky bureaucratic way of doing it, if you see what I mean. (Director of Adult Services in a West Midlands Local Authority that formally activated easements)

From what they told me, some [West Midlands DASS] probably regretted declaring stage 3 or 4. I couldn’t find much difference between what those 3 and 4 declared authorities were actually doing and all other DASSs were doing around the country... I was saddened that they were castigated. They got a lot more negative attention than they deserved. (ADASS Associate)

COMMUNICATION BETWEEN THE DEPARTMENT OF HEALTH AND LOCAL AUTHORITIES

A couple of weeks after we sent them the notification, they responded to acknowledge it and we had one email from them, which informed us that CQC were planning to list the authorities that had enacted the easements. That's the only contact we had from them on it. (Director of Adults Services in a West Midlands Local Authority that formally activated easements)

It was an inefficient way to prioritise resources, and a more efficient way would be some sort of general derogation of not just the care act but a whole range of acts, because there are aspects of all sorts of things which we do by necessity during peace time that you could suspend for a period of a few weeks or months, without any detriment to citizens....

It's like a minister from Whitehall trying to micromanage everything. The analogy I've used before is it's like someone with a really, really long screwdriver trying to change a plug in the next room; they can't see what they're doing, you know the instrument is far too far away to be effective, and there's no feedback if they're doing it wrong and getting the screwdriver in the live wire. You know it does frustrate us quite a lot, and I think the whole care act easement is a microcosm of that wider problem really. (Director of Adults Services in a West Midlands Local Authority that formally activated easements)

...when the [Coronavirus Act] came through and regulations were slowly coming through, it fell to local authorities to pick through. There were aspects of regulatory services, public protection, different things like that that we actually had to look at and pick through to see what was going on. And the difficulty that we had was there was no lead in time for the new regulations. It was just there. And often the media knew about it before it was actually given to us. They were drip feeding, the media were drip feeding things. So obviously they were getting some kind of indication from the centre as to what was going to be coming up... But then when it gets landed on your lap and you have to do it from now. It takes time to unpick legal and enforcement elements of legislation. And you need time to be able to do that so that you put appropriate measures in place to enact the legislation. And that's something that we really didn't get time to do. It was always on the go, on the go, on the go... Or sometimes the government would announce that this was coming but there would be a delay in the getting the guidance so that we could read through it and understand.

It would be nice if they said this is what we're going to do at this point in time... And to provide time for all of the regulators or people who have to put plans or responses in place, that we have time to do that. Not give it to us on the day or after the day that it's supposed to be in place. And then you're scrambling to make sure that it's in place... But getting that guidance document that provides you a fuller picture, it's so important for us to have these documents ahead of time so that we can put those measured arrangement in place and so that they're fair and they're accurate and we are responding to what the government wants us to do. So, that's timely communication isn't it? That's key to any really effective response. (Civil resilience Lead in a West Midlands Local Authority that did not formally activate easements)

In the local government community – and I mean LGA, ADASS, everybody, but particularly from adult social care perspective – in the early days of Covid, it seemed like a regular occurrence that we see the press release, or something announced at the 5pm Prime Minister and Secretary of State's press conference. And we now await the detail or draft guidance on it. Constantly having to react to the unknown. A good example is around care home visiting. So, the poor care home manager tomorrow is going to have all these very upset – rightly upset - relatives banging on their doors saying, "Let me in," because they've just heard

something from Boris or Matt Hancock. But the devil is in the detail really. They've got the other voice in the other ear saying "But you've to do a proper risk assessment. You've got to have your PPE." And at the receiving end, you have your own conversations about guidance and advice. So, it was interesting. If you call something an advice note, it's probably more likely to be read than if you call it guidance. I know that sounds silly, but these nuances can be quite important. I suppose advice is almost "take it or leave it," though it's not quite as casual as that. Guidance is more of an instruction. (ADASS Associate)

ON CLOSURE OF DAY CENTRES

Across all the councils there was the closure of day centres and associated day opportunities and activities. This was necessary due to social distancing guidance – a Public Health measure – rather than something which fell within the category of easements to provision. Nonetheless such closures had a profound impact on the amount, quality, and nature of the support available to service users and consequently on the respite time available to their carers, particularly unpaid carers at home.³¹³

A huge, significant impact - closure of day centres, lack of access to respite, shortage of time being available to spend in homes or inconsistency and people just reporting that they're falling away and falling out of the system. (Director of Services of a major national charity)

We've had Local Authorities who have used the last lockdown period as a piece of evidence as to why someone may now not need to return to their day service, if they haven't had it... and they've coped during that time.

There have been several families where they have survived but they are absolutely at breaking point. We had one call, a couple of weeks ago, which was around a family which had no respite service throughout the whole of the pandemic. It was supposed to open and then the last lockdown happened, and so from their perspective- they're all alive and they're still standing but... it's not "coping" at all. So yes; I guess if you're talking about coping from the perspective of "we haven't yet heard about any major safeguarding issues or, God forbid, someone dying who didn't get the support"... I think that's the bar that we're working towards, in terms of coping... We don't know of a serious incident but I'm not convinced there hasn't necessarily been one. (Social Care Advocacy organisation)

So, though the day services are open, a significant number of citizens have not had their places returned to them. The Local Authority have been very selective in choosing who would be able to go back to those day services – they're not operating at full capacity. And the rationale behind that would be, I guess, they're protecting the most vulnerable citizens, those with perhaps significant underlying health conditions, probably the Profound and Multiple Learning Disabilities group of citizens. So, of course the consequence of that is that people lost their day centre place in 2020 and here we are in almost October 2021 and for those citizens it's very difficult to see what the way back to those day centres will be really. And of course that group are most likely to be at home, so two things are happening there: those that are living with their families, that's obviously created significant additional caring responsibilities, the whole dynamic of the family would be based around day opportunity would be a form of respite, and that's gone. And then for those citizens that we perhaps supported who don't live with family members, that will have been a burden on the Local

³¹³<https://www.ons.gov.uk/peoplepopulationandcommunity/healthandsocialcare/socialcare/articles/coronavirusandthesocialimpactsonunpaidcarersingreatbritain/april2021>

Authority because the hours the person would have been at day service has had to be commissioned out to us to fill that gap. So, we feel we're caught between a hammer and a hard place now, because nobody knows what the next steps are for that group; none of the day centres are operating at full capacity. (CEO of a major learning disabilities charity in the West Midlands)

...around changes to day services and the increased pressure on individuals that care for people in our own home- so, family carers. There was a delay locally to get some form of offer of support to individuals that have suddenly gone to 24/7 care and responsibility, which did get better. But actually we heard from a number of individuals at breaking point more or less, because they were left to their own devices to care for their relative or child, when usually they relied on respite from day services. (Healthwatch Lead from in a West Midlands Local Authority that formally activated easements)

The biggest issue for us, and for carers, was the closure of day services... there's a bunch of people who relied on going to a day services. I'm thinking adults with learning disabilities or older people with dementia, and that has the added bonus of giving the family carer a break from caring.

No, we don't feel it's returned to business as usual, we don't feel it's the same local authority doing the same stuff. I think they're doing what they have to do but, in terms of day provision and support to prevent carer breakdown, we still think there's a long way to go... I think it's that families that have stepped in, and I think if most of those families were reliant on day service for a break- what are they doing now? It was an identified need before. Have we actually changed eligibility criteria? Or the threshold? I don't know; it just feels like they've closed them and not been bothered to open them because staff have got used to working from home or something. I don't know what the reason is... I've raised it and the response I've had back was "there's no issue; they're open, and it's on a need and risk basis." I mean it sounds all rosy and that there's no problem, but that's not what our intelligence and carers say to us.

All of those day services, I think they're still shut. But what we're told is "No, they're open and it's on a need basis." But people that used to go to day services aren't going there and they've cherry-picked a few people and I'm told they're open five days a week, but the feedback we get from carers is they're still closed and there might be one or two people going in, but every time I drive past the local centre it looks locked up to me. And a lot of our carers rely on those services. (CEO of a carers support organisation in the West Midlands)

ON SERVICE USERS DECIDING TO CANCEL SERVICES

Another issue highlighted by interviewees was that some service users or their family/carers decided to cancel or pause the support they usually drew on pre-pandemic, while others faced delays in assessment and provision and relied on unpaid carers during lockdown. A Carers UK Report from June 2020 stated that 4.5 million additional people were caring for

older, disabled or seriously ill relatives or friends since the start of the pandemic, bringing the total number of unpaid carers in the UK to 13.6 million.³¹⁴

We had some people who cancelled their support. Especially early on. They just rang up and said “No, I don’t want carers in my home. I’ll manage.” Or some family members provided the support instead, especially if they’ve been furloughed. So family members stepped in. Communities stepped in as well. So, we had someone from the Polish community who was struggling; she couldn’t go out, she was shielding and there was a local Polish café and shop, and they delivered food to her and some meals and things. (Principal Social Worker in a West Midlands Local Authority that did not activate easements)

There was a sense of “Yes, we are in a pandemic and things will not be normal,” and I think everyone accepted that in a sense. I know some people made really massive decisions like they didn’t want PAs to come in because it was risking their household to Covid. So families took over full time care. It had a really massive impact on people. So, yes, it’s a pandemic; we all have to make a bit of an adjustment, but I don’t feel there was a safety net there that necessarily would have picked up somebody who was really struggling. And also I think that we may well see increased needs in the future because of the impact of not having had the support people needed.

...at one point there was talk about could we even furlough our staff. For a long time, they [DHSC] said you couldn’t furlough PAs, because it’s government money or it’s public money. So people were saying, “Well, I’m going to lose my PA then.” Everybody was just trying to look for information and just really finding nothing. (Representative of a national social care rights organisation)

...many care homes were seeing their occupancy down to 60%, which is just not viable. I think many care providers are now looking at pre-pandemic occupancy levels. There was a lot of commentary that occupancy levels would never go back because people actually realised they could look after loved ones at home, and furlough enabled that... But I think an awful lot of people realised that looking after somebody with quite challenging dementia is a really difficult job, and it’s 24/7. You can’t do that on your own. And that’s been a really sad part of it as well. Some people have made themselves very ill through exhaustion from trying to deal with those type of situations. (Representative of the care sector in the West Midlands)

Interestingly, the demand on the service in the first wave in March, the amount of requests coming into adult social care dipped. So there was a very clear drop of demand on the service. We weren’t quite sure what that was about. By the time we finished the financial year and we look back over that year, from the April through to the April, the demand coming in for service was back up to the same levels that it had been... So we think that people just sort of huddled inside and decided they didn’t want to ask for help or have other people coming. There was a lot of fear. (Principal Social Worker in a West Midlands Local Authority that did not formally activate easements)

³¹⁴ <https://www.carersuk.org/news-and-campaigns/news-rss/6460-carers-week-4-5-million-become-unpaid-carers-in-a-matter-of-weeks>; see also

<https://www.ons.gov.uk/peoplepopulationandcommunity/healthandsocialcare/socialcare/articles/coronavirusandthesocialimpactsonunpaidcarersingreatbritain/april2021>

RELATIONSHIP WITH HOSPITAL DISCHARGE

...that was incredibly important, because we had to discharge the patients that were healthy and able to be discharged as a matter of urgency, and we had a limited number of homes that didn't have Covid. So we had patients that had not tested positive and a limited number of homes that hadn't tested positive. We tried to take into account family considerations, but we were not offering choice; we were discharging them to those places without choice. We were not charging people for that, and it was seen as a temporary placement. If they wished to stay there at the end of it, that's fine; but we would move them if they were not happy at the end of the crisis period. But they were not given any choice. (Principal Social Worker in a West Midlands Local Authority that formally activated easements)

The relationship between CHC payments and social care is I think difficult. It is more complex than it is for example if you have fully funded nursing care; that's clearer. It's specifically to pay for the nursing input into your care. You go elsewhere for the funding for the social care element. CHC I think confuses some of that. We're dealing with a very complex case at the moment where the CHC directly commissioned a social care service which is now not of the right quality. The NHS doesn't understand social care agencies, doesn't understand the quality issues.

Social care and the NHS are two organisations divided by a common language. They talk to each other and I don't think they really understand what the other is saying... There's an old joke which is that integration of health and social care is five years away and always will be. (Healthwatch Lead in a West Midlands Local Authority that formally activated easements)

IMPACT OF THE PANDEMIC ON THE STRUCTURE OF SERVICE DELIVERY AND MOVING ONLINE

I think the other thing which has happened and it's much harder to track it, which is why the soft data is important, is that the work which social workers and social care practitioners are doing has changed. So, they're still doing the Care Act assessments, mental capacity assessments, mental health assessments. They're still doing the statutory work, but they've been far more proactively involved in other ways. For example, day services had to think very proactively about how they provide day care for people with those needs. So different types of support, different types of support packages going in. That was the challenge.

The day services staff spent lots of time keeping in touch with people who were at home. Happy boxes were sent out with activities and various things to do. There were direct payments made to individuals so they could buy their support or purchase support or think about gaining support in different ways. (Principal Social Worker in a West Midlands Local Authority that did not formally activate easements)

If you simply put printed material into other languages, you build in an expectation that people in your staff will be able to speak those languages... Why do we assume that people who use British Sign Language can also read English? And that's been emphasised by the digital divide as well because accessing technology if English is not your first language is difficult. Accessing technology if your eyesight is not too good, if you're partially sighted that's not easy. Accessing technology if you have some mobility limiting conditions like arthritis it's not easy. It's hard to press the button. So there are a range of things around digital exclusion which add to some of the cultural and religious divides that are already there

and I think until we can genuinely begin sincerely to deal with those we will never land the sorts of key public health messages in some of the communities that have traditionally been little heard from. (Healthwatch Lead in a West Midlands Local Authority that formally activated easements)

THE IMPACT OF EMERGING FROM LOCKDOWN ON SERVICES

I think above all else, things just went quiet. We didn't have as many conversations about care as we used to. And I think that's perhaps more to do with the stoicism of the people we support. Usually if an enquiry is made to social care it is through a carer or a loved one, and as we're coming out of lockdown with the restrictions lifting, we've noticed a surge of enquiries about care, because obviously, the loved ones are seeing their elderly relatives for the first time in 18 months/12 months, and they are concerned that support needs to be done. Or, the opposite way round, the person has moved in with mum and dad during the pandemic to look after them, and now they're having to return to work after being furloughed for such a long time. And they need to get support in to replace what they're leaving behind, really. (Manager of the West Midlands branch of a national charity for older people)

The problems we're being presented with are much more complex than they used to be... When people were calling prior to the pandemic you would be able to say your problem is with general practice and you can't get an appointment and all the rest of it. And you'd be able to point them in the right direction, saying "if you talk to these people they can talk you through your problem and probably resolve it." But now when people are calling and there is a problem with private care, there's a problem with mental health, there's a problem with social care, there's a problem with loneliness and isolation, there's a problem with anxiety, there are relational problems. I think it's partly to do with people having been locked down for so long and then suddenly emerging. (Healthwatch Lead in a West Midlands Local Authority that formally activated easements)

So one of the most positive things that happened to a lot of people is that people stopped over-scrutinising direct payments and basically said do what you need to do during this pandemic. And it was streamlined to such an extent that it probably ... almost got near to what direct payments should have been. And now we are coming out of that; all the scrutiny measures have been put back into place now. There's this massive red tape bureaucracy and scrutiny that's coming back into play now. (CEO of a national social inclusion charity)

ON COMPLAINTS

Older people and people with learning disabilities generally don't like to complain. There's almost a reluctance to raise concerns because of a fear that it might have a backlash on the care that they are receiving. So I think, whereas maybe with some Councils they have a culture of encouraging complaints and using complaints as a way of gathering intelligence on the quality of services provided, there is still in some care providers a culture of defensiveness; where complaints are viewed negatively...

Delays are certainly a theme that we have seen in terms of our Covid complaints; we probably wouldn't draw the conclusion that the council should have used easement. The reality for that individual is they didn't have a service: whether it was because of normal delay – and you know there is delay in council assessment across the board – or whether it was because of Covid. In a way, the legislation gave councils a get out which they chose not to use. And I don't think they could be criticised for that, because from a complainant's point of view, the outcome is the same. (Social Care lead, Local Government and Social Care Ombudsman)

CHANGING MODES OF ASSESSMENT

I think there was a suspicion that ... for those other Local Authorities areas where easements were put in place, I think there was that concern that this would be a shield for effecting change to people's care and support, without there really being a lot of social work intervention, reassessment. That was the thing that worried people most, that the potential of assessment of individual care packages would be taken at quite a superficial level and not in the way that people would normally be reassessed or have their care needs reviewed. So, there was a lot of anxiety. We were very anxious as an organisation because for a lot of people there's been a background narrative of potential service cuts and over the whole period of austerity there has been a massive reduction in support services for people with disabilities, learning disabilities. So, I think there was that angst. No communication from the council as to what their intentions were. (CEO of a major learning disabilities charity in the West Midlands)

I think local authorities are very keen in their strategies to say "Oh, we don't need to visit everybody in their home setting and assess them anymore; we can bring them into hubs or we can do them over the phone. And I personally think that there's no substitute for face-to-face assessment when you're looking at assessing somebody's care needs. (Manager of the West Midlands branch of a national charity for older people)

The issue now is with social workers not being as available because I think there's some preference to online working... It's great that you can all work from home. However, actually meeting people face-to-face makes a fundamental difference. And you cannot assess and appropriately support vulnerable adults through a screen. And hybrid works, but fundamentally in adult social care you need to be communicating with families, you need to be communicating with people who need care and support. And when you are dealing with often quite elderly people who are not necessarily tech-savvy, and certainly if you're dealing with people who have cognitive impairment, talking to a flat screen just doesn't work. So thought needs to be given not just to about what is in the worker's best interests, but what's in the client group's best interest. And I think what's happened is a lot of that burden of explaining, supporting, and guiding through the process that would be done by a social worker has ended up at the door of care home managers and domiciliary care managers... it's one of those unintended consequences.

We accepted somebody because you can't go in and assess people at the moment still, so we accepted somebody on the social worker assessment and they were within a residential service. We are a specialist provider for dementia and have great success managing people with aggression. However this individual that was admitted to us last week is not aggressive; he's a predatory, violent individual. So I think the polite term is "we were sold a pup." But this individual, within hours of admission, had sought somebody out and had punched them

in the face. So a social worker who did not do a proper assessment as they do not do assessments within settings. A provider who was not open and transparent... the consultant psychogeriatrician was concerned that this individual had been discharged to anywhere other than a secure unit. Even more importantly, there's the impact on this individual as they have to be moved again and will have to settle in a new appropriate setting. Good communication from the discharging provider to the social worker would have prevented this as they would have been appropriately placed. (Representative of the care sector in the West Midlands)

FILLING THE GAPS – THIRD SECTOR AND COMMUNITY EFFORTS

A Local Government Survey in 2020 found that 95% of Council Chief Executive Officers believed the contribution of voluntary and community groups was 'very significant' or 'significant'.³¹⁵ The response of individuals and communities operating at local level, often filling gaps where immediate needs such as access to food and medicines, and social contact, were not being met by statutory providers during the first peak of the pandemic, was organised with remarkable speed, agility and good will.

How we worked with the different voluntary organisations was just absolutely amazing. It was the best of the city really. I'm a local guy and seeing these other not-for-profits and what they could do and what we were doing together- yes, it did warm your heart knowing you could make a difference for families. There was a void around what we should be doing, but we just felt we should do what we thought was right for carers, regardless of the pre-Covid contract. We said, let's do a safe and well check of those that we think are the most vulnerable, and where we identify a need around finances or food or whatever, we'll solve it for them, regardless. (CEO of a carers support organisation in the West Midlands)

We've looked internally to see who we can conscript in to help us. And then we've also utilised the existing local community volunteers or smaller charity groups... And local knowledge is everything. It's gold, you know, having people who are on the ground who are our eyes and ears is really something that we value.

Business continuity plans kicked into place and we parked what we could park and concentrated on what needed to be done at the time. And, you know, one thing that I think has come out of this especially for emergency planning going forward, is we've gotten away for many, many decades of not having a major incident. Now we've had a national, global, major incident that's ongoing, and people realise that value of actually being prepared for something like this. (Civil resilience Lead in a West Midlands Local Authority that did not formally activate easements)

I think [the first impression] was one of bewilderment, to be honest. The Local Authority taking such a significant policy decision. Obviously we were in a really difficult place and in part I think that probably excuses that the normal things that would happen didn't happen, but I think for such a significant policy decision for the sector not to be involved... I didn't believe it, and it was only when I dug down in the website I found a really small piece that said the Local Authority was enacting the clause in the Act that allowed them to do that. But then it was almost impossible to get any information on how that had come about. And I do

³¹⁵ Cited in Locality Report, We were Built for This, 2020. <https://locality.org.uk/wp-content/uploads/2020/06/We-were-built-for-this-Locality-2020.06.13.pdf>

suspect it was that 'what if' situation- if we are faced with a cataclysmic financial meltdown, we're going to have to do something. But I think not to make that very public in the sense that everybody understood, perhaps what easement meant, because I think for a lot of people they had to go away and Google that... And then it struck me that it would almost allow them to make unilateral decisions on a person-by-person basis- to say you get 10 hours of support, but you're going to have to live with 6. Now, to my knowledge, I don't think they enacted a single reduction in care. We certainly have not had anybody come to us to say they did that. (CEO of a major learning disabilities charity in the West Midlands)

March last year was quite a complex situation to get to grips with. I think we made the decision to remote work quite early before the official lockdown, a few weeks before. But actually a lot of the partnership meetings and statutory meetings that we sit on started to step down from March. So, officially, the emergency structures kicked in at the start of the pandemic. So, that when was the gold command, silver command, and the bronze command structures within the Local Authority kicked in. And, unfortunately, we were not party to those meetings. Not a lot of external organisations were party to the structures in the very initial stages of the pandemic... And, unfortunately, we hadn't got the voluntary sector in even though we're a statutory partner as well. So, we weren't party to those initial discussions. It took around two months to start to get back into the meetings and get involved in the meetings that we needed to be involved in. (Healthwatch Lead in a Local Authority that formally activated easements)

LEGACY?- IMPACT ON SERVICES DURING THE PANDEMIC ON HEALTH GOING FORWARD

In terms of the direct impact on services of the pandemic, we have huge challenges around mental health, across the spectrum, children and adults. Pressures really coming through right across the board and we feel we're seeing people who normally acute mental health providers would be seeing there. [But] because they were swamped with people that they need to see, we've had to invest in a huge amount of low level mental wellbeing support as well. So that will be for me the stand out impact from a health perspective. Obviously, we don't know what the longer-term effects are on healthy life expectancy and all those kinds of things when all this works through. (Director of Adults Services in a West Midlands Local Authority that formally activated easements)

if you look at our services apart from suspending some of the community services because the restrictions required us to legally do that, at the point at which the restrictions eased we were back open. Yes, we were on reduced numbers but we brought back all of our services, and of course the other bit was is that most people were getting two or three phone calls a day and we produced a huge, huge volume of online content, Facebook Live, Zooms, so I think for a lot of our citizens their sense was that they actually stayed quite well engaged with us. I think it was with those other things where you couldn't ring up and get a GP appointment, you couldn't get to see a dentist, you couldn't see chiropody; your day centre was shut, the shops were shut. You couldn't go and visit your family, these were all massive issues. Those were the things that were most difficult to explain to people in a sense and that added to people's isolation because you're used to going round to your mum's for Sunday lunch and you couldn't go round to your mum's for seven months. It was little wonder that Christmas created such an issue nationally... (CEO of a major learning disabilities charity in the West Midlands)

A lot happened. And a lot of it was necessarily reactive and... we don't want to set too many nerves a jangle, but we're starting to worry about next winter and hospitals and the knock-

on effect on adult social care and the state of adult social care, particularly its workforce. We're not just tired, which is important, but actually we're losing home care staff a lot back to, ironically, the NHS- which is almost like robbing Peter to pay Paul. (ADASS Associate)

LEGACY?- REDUCTION OF SERVICE PROVISION

When you're talking about something like wellbeing hubs: it's very unstructured, it's a space for people to come, to feel safe around peer-to-peer support, as well as staff on site to problem solve with you and sort out any issue you've got; but also just social interaction. It's very difficult to take that model to a blended model that is mainly remote working. It doesn't work quite as easily and, as I say, most of the people, there's a cohort within that who probably come to that facility every single day of the year. That's their safety net and the environment where they live may not be a therapeutic environment and they've just become isolated within that sort of setting... It's going to take us years to support some of these individuals that have been impacted so greatly to enable them to be able to rebuild their lives. (CEO of a West Midlands branch of a major mental health charity)

My worry is because people managed without support, there is a view that people can survive without it. So there's a massive worry from people on the ground now is that because they didn't have five days' service, or because they didn't have such a support and the family did it instead, that the social workers come round and say "Well, your family can carry on doing it can't they? Or you know you don't need that, you managed, you survived." So there's a level of "what's going to be the view of social workers and others going forward?" Is the view that social care support is purely to survive rather than live? And, if so, then the pandemic is given really the bad legacy that people can survive without five days service, can survive with the parents doing it. It doesn't say how well they are surviving or what mental health issues or other issues that's created; just the fact that they haven't needed it, therefore will they need it going forward? So people are really worried about the review of their assessment saying well actually you didn't need that, therefore that's not a need anymore. (Principal Social Worker in a West Midlands Local Authority that did not formally activate easements)

The thing about day centres, it's an interesting phenomenon, for a lot of families they organise their entire life around the fact that their son or daughter goes to the day centre at 9 o'clock and comes home at half-past-four. We're aware of people who had to give up work. We're aware of people who found themselves in that space where they were covering 24-hour care provision with no available respite because, independent of the care homes, the residential respite provision was shut so people couldn't, even if they wished to, book respite. Completely shut. Even now it's only open at 75% capacity. (CEO of a major learning disabilities charity in the West Midlands)

Having now done it for this length of time, are we going to see people, not necessarily brought back into the fold of services, but actually told to carry on as they are, and so are we going to have people that are reluctant carers, going forward? And then you've got all the issues around, when people do things reluctantly they can become quite agitated, quite easily, because they resent the fact that they've been pushed into doing something that they don't want to do. And therefore, you end up with safeguarding issues and all sorts of other issues that come out of it, because people are forced into a situation... So I think going forward, we really need to think about the fact that people have done things because they had no choice, they didn't. But we shouldn't see that now as the way forward and the norm going forward. We should take the pressure back off those informal carer type roles and bring

it back under the umbrella of social care services and community support services. (CEO of a West Midlands branch of a major mental health charity)

We had a lot of messages from families saying, "We're genuinely struggling. What can you do to help us?" And of course we're almost in October and for a lot of people, and it is quite a few people, those services have not been returned. So, in a sense though the Local Authority suspended its easement policy, in many respects it's continued in another form. You know, people have lost access to their services. And of course the other things that have happened: some of the providers that the Local Authority relied on have collapsed in that period as well, so the services that people were used to actually aren't there for them to go back to anyway because their provider has either closed the services completely or will never be in a position to reactivate the level of support that was there.

I think what the pandemic did was it amplified the financial stress that exists in social care anyway. I think probably what it did was it accelerated the organisations discovering even with things like furlough, simply suspending their services they weren't financially able to sustain themselves. And I have to say to the Local Authority's credit, they did everything they could to support us. I think they genuinely tried to do everything they could. So, things like the distribution of Covid emergency funding— the council took a position very early on which I think was really important for everybody: providers, citizens, families, that they needed services to be there when we came out of this. So, they paid for services in full, even if they weren't operating. (CEO of a major learning disabilities charity in the West Midlands)

Yes, there is a legacy of better partnership working, which is good, and working out that you can free up some of the budget lines in terms of relationship with the voluntary sector without going blind. That's good. At the same time, there is this big issue of individual citizen being able to access services in a timely way, and that is just a big, big issue. (Healthwatch Lead in a West Midlands Local Authority that formally activated easements)

LEGACY?- FUTURE DECISION-MAKING AND PLANNING

A reflection for future national emergencies is about this decision making and bureaucracy and how the government can cut through that and allow people to get on and do the right thing in the quickest possible way, in a way that manages the risk of harm to people and risk of embezzlement and fraud but recognises that the circumstances are unprecedented. (Director of Adults Services in a West Midlands Local Authority that formally activated easements)

One example for me would be it's very difficult to see what the winter's going to look like, but I think it would be reasonably fair to say there's likely to be pressure through Covid, flu, other seasonal circumstances, even things like how recruitment plays into that. From our perspective it's a workforce under massive stress. It's exhausted, it's been through the wringer. Another tough winter - it's not that I want to be scaremongering or overly dramatic - but we need to have some contingencies in place, the what-ifs. I think that's the Covid learning. (CEO of a major learning disabilities charity in the West Midlands)

...life has gone on and of course the government have launched a number of consultations and even strategies relating to adult social care during the pandemic, the latest being the disability strategy. I think that there's a lot of discontent out there in terms of what's in the strategy- will it transform people's lives? Is it just rhetoric? But I think the big one is what

the government has decided in terms of the funding, very little of that will appear in social care and it certainly won't change or transform everything. Our biggest issue is that unless we pay people other than poverty wages we will never recruit into the workforce. How do we give it value, how do we recognise that the vast majority of social care staff are highly skilled? Their dedication, their compassion, their empathy... Until you've watched a care worker tube feed a child you don't realise how hard that is, and the responsibility that you have when you're doing that. Yet they're paid £9.80 an hour. I think most people would recognise that that doesn't sound fair. [But it won't improve] until the government recognises that if we pay poverty wages, we will continue to haemorrhage our workforce. (CEO of a major learning disabilities charity in the West Midlands)

LEGACY?- MULTI-AGENCY WORKING AND INFORMATION SHARING

Most of the organisations know their communities really well; they're deeply embedded. But the willingness to share and the willingness to contribute to each other's problems and solutions was amazing really. I think one of the take-aways would be that in a sense it strengthened the sector's understanding of itself. We had meetings every day for months, and I think those structures will stay in place. I think it's allowed the sector to recognise again what its own value and worth is and its own place in the world. So I think a lot of relationships have been strengthened, a lot of new relationships have formed and things have sprung from it. I sometimes think the Local Authority's memory is relatively short and I think they need to go away and reflect on what they learned about working with the sector in a very, very unique set of circumstances and ask themselves an honest question- what do they think they would have done without us? And that's not because we want to be patted on the back, but just that it's a highly skilled, highly professional, highly flexible and agile sector. (CEO of a major learning disabilities charity in the West Midlands)

The information sharing ... has raised awareness because it's been such a prolonged incident essentially. Because we're not in this recovery mode yet. We're still trying to find out what a "new normal" is, you know. And we're still taking steps towards that. So we're still responding in a way. And I think it's pushed the understanding of the need for proper data sharing for the vulnerable. And a better understanding of what each organisation actually contributes. Because in peace time the NHS might ask: "Well, why do you need that information?" And then when they see what the local authority actually get their hands into, they realise, and they start helping out. Because you know we do so much as a Local Authority and a lot of people don't really understand it. From social care to benefits to hardship to housing, homelessness, you know; there's just so much that we have underneath that umbrella. And I don't think people quite realise that. (Civil resilience Lead in a West Midlands Local Authority that did not formally activate easements)

There were times when that worked really, really well. It's like all things, isn't it? How information is shared often depends on what the impact is going to be, and if it's bad news impact it comes out more slowly or in different ways. And I do think one of the [positive] factors was that everybody was home working and dispersed and the connectivity, how decisions were made, how quickly they were transmitted and communicated. And there were some great mechanisms in place; there was a cross-sector, cross-system resilience group, NHS, Local Authority, key providers, Public Health, etc. So those mechanisms were in place and they were genuinely robust, but I think there were occasions where decisions were being made at a statutory governance level which they didn't choose to necessarily share quickly or explain. (CEO of a major learning disabilities charity in the West Midlands)

LEGACY?- WORKING ONLINE

You know when you're talking to somebody with body language, and all sorts of things, and when you're in their house, probably we're better at that, aren't we, than maybe on phone calls. So I think that's something to work at. I definitely think we'll be able to make use of the technology and, maybe it will be as we get relationships with people having done the initial assessment and initial work with them, the follow up stuff could be just done more easily by video, etc. (Principal Social Worker in a West Midlands Local Authority that formally activated easements)

Some people still might not want us in their homes and it's a very difficult one, but I suppose it's very important as well from a safeguarding perspective because we haven't really been in homes, and in care homes as much. And the worry for me throughout has been what's going on that we haven't seen, that we might have missed because we've been more virtual, that we might not picked up on. So, that's some of the concerns but what I don't want to lose is some of the creativity that we've had. (Principal Social Worker in a West Midlands Local Authority that did not formally activate easements)

I'm not sure that we have got back to where detailed assessments are being carried out now, because certainly within the county social workers are hiding behind the fact that they don't go into services still. This, coupled with lack of vaccine uptake in social workers preventing them going into care settings, means they don't tend to meet the people that they are supposed to be supporting... they tend to be doing things through using Teams or Zoom, they don't go into care homes. And that includes MDT meetings around rapid discharge, discharge to assess beds, it's all done by virtual means.

The quality of assessments and the interaction- to get a holistic assessment completed you cannot do that for a vulnerable older person through a screen, you need to be with them, you need to be understanding their needs. So, I think the council always continued to meet the needs of their community and they have continued to all the way through the pandemic; they have done a sterling job. But the practicalities of that, and the impact of social workers in particular moving to virtual ways of working, it has had a significant impact on care home and ancillary managers and supervisors because they're trying to work out the gaps. Lots more paperwork, lots more risk assessments, lots more fact finding which one would normally expect to be within a holistic social work assessment. And they're less available to families. (Representative of the care sector in the West Midlands)

The pandemic has had a permanent impact on the way that many interactions with people are [now] done online rather than face-to-face: virtually. The Care Act easements? That legislation will be a footnote in history. Having said that, will it be a footnote in history? I suppose, I don't know. What I just said about the Care Act being under strain. I hadn't thought of it this way before, but maybe the Care Act will come back [under scrutiny]. They'll say "Well look, we can't meet people's needs. So let's have some elements of what was in the Care Act easements to recognise that." (Chair of the BASW England Adults social work group)

LEGACY?- IMPACT ON IMPROVING PROFESSIONAL PRACTICE

Some of our multi-agency meetings have been a lot better attended, because you can be very efficient on that. And so, what we're probably going to do is try and have a hybrid model where we've got enough time in our office together, and particularly get together when we need to do something creative. We've tried to replace the ad-hoc informal conversations by having regular catch ups, and things like that. It's not as good as making somebody a cup of tea in the office... it's a stressful phone call. (Principal Social Worker in a West Midlands Local Authority that formally activated easements)

I'm not sure whether every Local Authority actually does every element that they're supposed to be doing under the Care Act anyway, because it's down to interpretation. That's not a criticism; I think it's a pragmatism because of resourcing. You know local authorities' funding has dropped by well over 40% over the last six or seven years. They don't have the resources. The biggest drain on local authority resources is adult social care... So I think in a way one would actually have to look at how local authorities were complying with the requirements under the Care Act before the pandemic to then be able to see what the difference the pandemic has made. (Representative of the care sector in the West Midlands)

It's just essential face-to-face, whereas now it's "What do we do?" And there's no kind of guidance out there, unless I've missed it, to tell us. And even regionally as a PSW network it's all like we're doing risk assessments [and] we're looking at individual situations and it's "How do we get back to some kind of normality?" But we're talking at the minute about wellbeing, especially staff wellbeing, and the importance of student social workers and new workers, and you learn as social workers sometimes by osmosis. By being in the office, hearing conversations and listening to things and saying: "Can I come with you on that visit so I can see what you do?" Or observing practice or observing phone calls. And what we were seeing is students that are coming through now who have done their final year during Covid and perhaps are a bit, not confident about going out there, because they haven't done it as much. So, it's thinking about the skills deficit that we might find, and the competence building that we need to do. Especially in social work, and as a principal social worker. So, that's some of the things that we're talking about at the minute, but we are planning to reopen to some extent and move to more face-to-face work- but it is that really tricky balance. (Principal Social Worker in a West Midlands Local Authority that did not formally activate easements)

It's an emotionally weighty job. Without their colleagues around them it's even more so. We're trying to think of ways where we can say to people "Okay, you might be working at home, but let's all come together. Let's spend time together and get to know each other and enjoy each other's company and look after our wellbeing." We're working on that at the moment. That's really important because, if we get that wrong, then we may really not be in a position to cope with the next wave. (Principal Social Worker in a West Midlands Local Authority that did not formally activate easements)

VII CONCLUSIONS: REFLECTIONS AND LESSONS LEARNED

The introduction of Care Act easements and of related “flexibilities” has clearly had an impact on service provision and on those working in adult social services in Local Authorities. With the cluster of Local Authorities that formally activated higher-level easements, the West Midlands region is notable case study in which to compare strategic and operational responses to the introduction of the emergency legislation.

It is also notable that although very few councils formally activated the easements, most councils nonetheless adapted their practices in similar, pragmatic ways. What lessons can be taken from this experience- both positives to build upon, and responses that ought not be repeated?

Key Findings

1. **Professional organisations such as Association of Directors of Adult Social Services and Chief Social Workers were involved in pandemic planning at national level, both following Exercise Cygnus and in the early days of the Covid-19 pandemic. However some interviews with stakeholders indicated that this early-stage awareness had not been pre-emptively integrated or effectively disseminated at regional and local levels. Some staff at local level were left struggling to manage the fast-changing situation and the “drip-feeding” of complex guidance from central Government, often via the media.**
2. **Language matters. The term “easements” itself – which has a very specific legal meaning in Land Law – was not appropriate to use in Pandemic Planning or DHSC Guidance which concerns alteration or potential removal of social care services.**
3. **Contrary to what had been assumed, there was not a simple division between those Local Authorities which had, and those which had not, activated and/or implemented easements. As this Report has demonstrated, there were in fact three clearly discernible categories in practice. First, there were those which operated under higher-level Care Act easements which were notified to the DHSC and listed on the CQC website. Secondly, there were those which expressly and confusingly declared that they were operating “Care Act easements,” including up to the end of 2020, but which appear to fall within Stage 2 of the Guidance. Thirdly, there were those which self-declared that they had not implemented easements and did not formally state that they are operating with Stage 2 “flexibilities”. There was also, as noted above, one West Midlands Local Authority where there appeared to be a contradiction in the minutes of different meetings as to whether easements had or had not been operating. In practice, however, in terms of the implementation of changes to provision of services the overall impression is that most West Midlands Local Authorities were taking a similar approach, but some formally declared the changes while others did not.**

- 4. Some inconsistency in approaches regarding provision of information by West Midlands Local Authorities regarding the easements.** Some Local Authorities did not use the term “easements” when providing information regarding impact on services on their websites, while others did. A DHSC webinar on 8th April 2020 indicated that methods of dissemination were a matter for Local Authorities.
- 5. Inconsistency between some West Midlands Local Authorities as to whether measures such as the closure of day centres constituted a Stage 2 “flexibility,” a change that could be considered an “easement,” or a public health measure pertaining to the separate Government guidance on social distancing.**
- 6. It was clear that professional organisations and networks – notably regional ADASS and PSW groupings – played a key role in supporting their members and providing sounding-boards for decision-making regarding adult social care service delivery throughout the pandemic.** Frequency of meetings increased at the start of the pandemic as members scrambled to address the crisis and interpret Government Guidance. **Given this, the diverse approach taken to the interpretation of the Guidance remains somewhat puzzling.**
- 7. It is reported that minutes of the West Midlands Directors of Social Services meeting in January 2021 stated that easements in the first wave “caused significant anxiety and distress to the public and would not be considered unless as a last resort”. These minutes appear at conflict with other statements by Local Authorities e.g. that easements had not resulted in notable “complaints or challenges” at local level.**
- 8. Stakeholder reporting suggests that a paucity of data has made it difficult to identify clear lessons and conclusions from this experience to date.** This has hindered research into the impact of the pandemic and associated mitigations, both on the adult social care workforce and on those who draw on services. At the start of the pandemic, it appears that insufficient weight was placed on gathering and recording detailed data; for example, the CQC listing of Local Authorities that had activated higher-level easements did not provide dates or pertinent details; elsewhere, minutes of some meetings are unavailable; survey data is limited.

Lessons for Future Pandemic Planning

- 1. Ensure that draft Pandemic Planning legislation and associated guidance is made available in the public domain at an early stage to facilitate scrutiny and to reduce the prospect of uncertainty and inconsistent approaches.**
- 2. Do not use terms such as “easements” which have a very specific legal meaning in other contexts.**
- 3. Regular emergency planning exercises should continue within and across Local Authorities, with the DHSC and relevant professional organisations sharing and feeding in key intelligence to be integrated at regional and local levels.**

4. **A more clearly defined operating model, both distinguishing and explaining the interface between different sets of guidance, is required. This would help ensure clarity in making and communicating decisions around closures and changes to services and opportunities in pandemic conditions.**
5. The need for genuinely inclusive participatory co-production of policy has never been more acute, nor more apparent. At Local Authority level, it would be useful to have a dedicated contact point at DHSC available to respond to immediate queries and crises. The newly formed DHSC Regional Assurance team went some way to bridging the communication gap between central and local government; a permanent role of this type may prove effective. **Improved and ongoing relationship, information transfer, and co-production between DHSC, Local Authorities, professional bodies, third sector organisations, community groups, and those who draw on support is essential going forward.**
6. **Improved systems are needed to monitor implementation and impacts of any future legislative changes with a clearly assigned role to a specific Government Department, would support intelligence gathering, enable learning and drive policy change.**

Key findings for future Social Care provision beyond the pandemic

1. Councils, communities, and third sector organisations can work wonders together with resourcing, communication, and mutual respect. The most positive finding from stakeholders across the board was that communities – in the broadest sense – pulled together at the onset of the crisis, building trust and creative responses. **The future challenge is to ensure that, where they have developed, such collaborative relationships can be maintained and built upon.**
2. Adult social care provision was already under severe pressure pre-pandemic. Stakeholders told us that the crisis only amplified existing problems following many years of austerity and cuts. There remain serious concerns that without reframing the funding model the legacy of Covid-19 may simply be one of exacerbating existing shortcomings. **There are growing calls for genuine co-production to rethink and reform the adult social care model more fundamentally at policy level “to close the gap between the positive ambition of the Care Act 2014 and the reality on the ground.”**³¹⁶
3. Interpretation of new legislation and amendments to existing legislation requires a high level of legal literacy. The complexity and ambiguity of parts of the Guidance, and the subsequent need to balance checks and rights across existing and temporarily amended legislation, led to difficulties in interpretation and divergent approaches and outcomes across Local Authorities. This in turn relates to ongoing concerns regarding

³¹⁶ As stated by #socialcarefuture at <https://socialcarefuture.blog>

the need for support and supervision to ensure that professionals and care workers understand and can effectively apply the principles of the Care Act 2014 and the Human Rights Act 1998 at operational level. **Increase legal component in ongoing training and supervision at Local Authority level for social care staff and the social work profession, and embed such training as mandatory for care providers and those working in the sector, with regular opportunities for senior staff to revisit legislation and its operational implications.**

4. The transference to remote access technology creates potential but also pitfalls. Online working methods protected workforce health and capacity during the height of the pandemic, but concerns have been raised with regard to the move from face-to-face interactions relating to loss of access (safeguarding), contact (to build relationships and counter social isolation), and efficacy of assessments undertaken remotely (missing wider context). Increasingly digital alternatives have been utilised when day centres were closed. Digital exclusion remains a real issue among those who draw on social care. Digital alternatives may not be accessible and feasible for independent use; for example, for persons lacking mental capacity or for those who may find the experience of communicating via a screen confusing or distressing. In response to this shift, West Midlands ADASS and partners have already initiated a consultative programme to shape 'adult social care digital leadership' regionally and nationally.³¹⁷ **Any decisions to switch longer-term to online assessments, and indeed any aspect of service delivery, should be fully risk-assessed and subject to broad consultation with those who draw on support, carers groups, social care professionals and the wider community.**
5. Community advocacy and disabled people's organisations remain concerned that there is a risk that services and provisions that were paused, reduced or stopped during the pandemic may not return to 'normal' and that provision and rights may be rolled back in the future. **These real concerns need to be addressed by Local Authorities going forward.**
6. The pandemic experience demonstrated the tensions in the crucial interface between the NHS and social care, exemplified by hospital discharge processes and their implications for care home residents and workers, and for community care. Specific resource was introduced to address the process of rapid hospital discharge in the interim. However, the relationship between health and social care remains a potential fault line. **The move towards Integrated Care Systems as a partnership between the NHS and adult social care must be consistently monitored to ensure that all stakeholders have a place at the table, a voice in decision-making, and a fair share of resources.**

We hope that this initial Report will provide some useful insights into how those working in Local Authorities and the voluntary sector faced the challenges and heavy responsibility of supporting their communities through the worst of times. Our aim was both to examine the new legislation and associated Guidance, and to give voice to the experiences of those

³¹⁷ <https://lgiu.org/the-west-midlands-is-investing-in-adult-social-care-digital-leadership-and-you-can-too/>

charged with implementing these in what were indeed unprecedented and highly pressurised circumstances. Their accounts demonstrate the inherent interdependence of different parts of the adult social care sector; the need for clear and timely communication at every level to draw out the best of this; and the need for independent oversight and scrutiny of operations and service users' experiences. This is our initial Report, but our project is still ongoing.

The Care Act easements may at first glance be viewed as a minor footnote in the history of a terrible pandemic which continues to have profound and far-reaching consequences across society. However, their appearance helped focus attention on the acute pre-existing pressures facing adult social care provision and its budgets and workforces, and emphasised the in-built limitations or potential "flexibilities" of the Care Act 2014. The problems that the easements were designed to alleviate have not abated. In 2016, the United Nations Committee on the Rights of Persons with Disabilities' 'Inquiry into the UK' found serious failings in UK Government policies that had resulted in "grave and systemic violations" of the rights of persons with disabilities.³¹⁸ These findings were rejected by the Government, though there has been subsequent monitoring and reporting undertaken.³¹⁹ Published just before our Report went to print, the CQC's widely publicised 'State of Care' has warned of a "tsunami of unmet need" in the adult social care sector if the crisis in this "exhausted and depleted" workforce is not urgently addressed.³²⁰ As we move towards our second winter with Covid-19, the whole question of adult social care policy, funding, and reform is under intense public scrutiny, much of it focused on the publication of the Government's *Building Back Better: Our Plan for Health and Social Care*.³²¹

³¹⁸Committee on the Rights of Persons with Disabilities *Inquiry concerning the United Kingdom of Great Britain and Northern Ireland carried out by the Committee under article 6 of the Optional Protocol to the Convention. Report of the Committee at*

<https://www.ohchr.org/Documents/HRBodies/CRPD/CRPD.C.15.R.2.Rev.1-ENG.doc>

³¹⁹ <https://commonslibrary.parliament.uk/research-briefings/cbp-7367/>

³²⁰ <https://www.cqc.org.uk/publications/major-report/state-care>

³²¹ Presented to Parliament by the Prime Minister by Command of Her Majesty September 2021

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1015736/Build_Back_Better-Our_Plan_for_Health_and_Social_Care.pdf, on reform of the system see for example, J. Glasby, Y. Zhang, M. Bennett, P. Hall "A lost decade? A renewed case for adult social care reform in England." (2020) 50 *Journal of Social Policy* 406 and C. Needham, K. Allen, E Burn, K, Hall, C Mangan, , H. Al-Janabi,, W Tahir, S Carr, J Glasby, M Henwood, & S. McKay, , 'How do you shape a market? Explaining local state practices in adult social care', (2021) *Journal of Social Policy*, forthcoming.

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