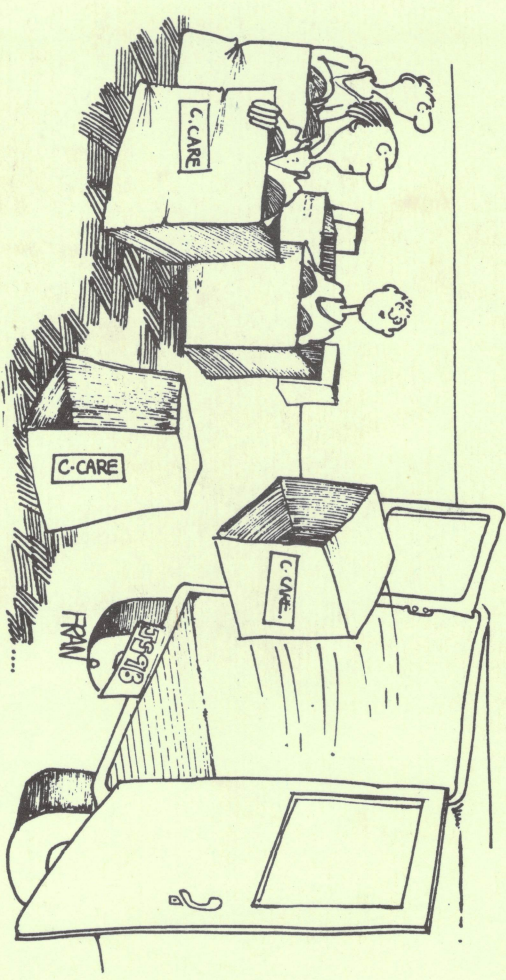


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A booklet from the
Greater Manchester Coalition of Disabled People

A brief guide to



GREATER
MANCHESTER
coalition
—of disabled people—
G.M.C.D.P.

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SUPPORTED BY
A.G.M.A.
ASSOCIATION OF
GREATER MANCHESTER
AUTHORITIES

Suggested Reading

"The Legal Rights of People with Disabilities"

published by:

Castlemilk Law Centre
30 - 32 Dougrie Drive
Castlemilk
Glasgow
G45 9AD

"Oi It's My Assessment"

published by:

People First
Instrument House
207 - 215 Kings Cross Road
London
WC1 X 9DB

"National Health Service and Community Care Act 1990"

published by:

HMSO Publications Centre
PO Box 276
London
SW8 5DT

"Community Care or Independent Living"

published by:

The Joseph Rowntree Foundation
The Homestead
40 Water End
York
YO3 6IP

(Copies of above publications available to view at GMCDP)

The

NHS & Community Care Act

- a GMCDP Briefing Paper

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Introduction

Whether living in our own homes or in residential care the Community Care Act is affecting the lives of many disabled people. This booklet aims to give an overview of the Act and point people in the right direction for further information and advice.

Background

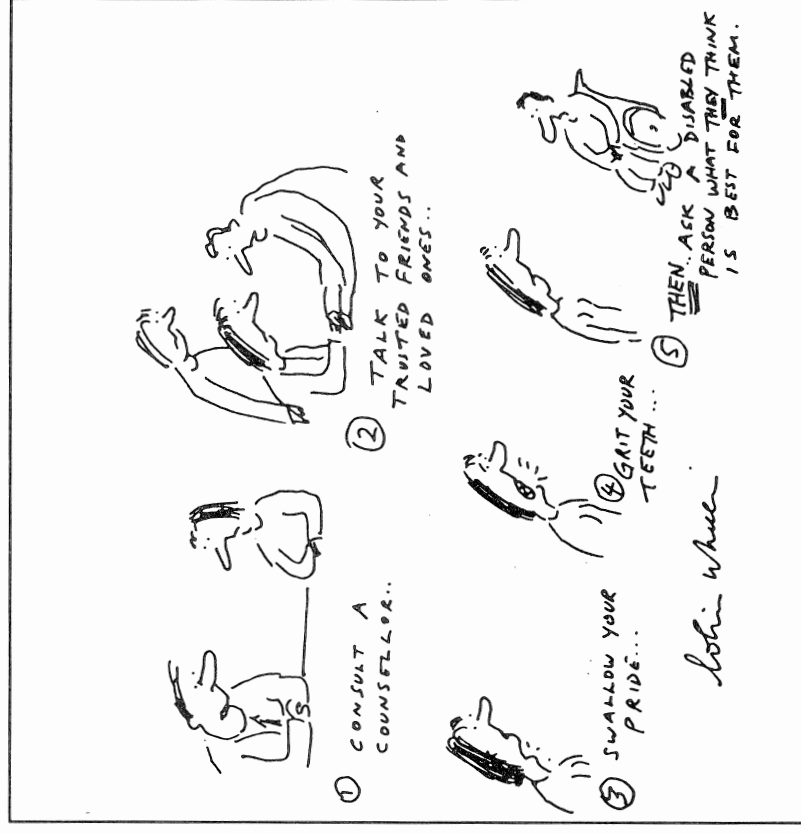
The reasons why the Community Care Act came about differ depending who you talk to. It has long been argued that services should be based in the community rather than in institutions - simple issues of choice, control and independence being cited, often by residents of institutions who wished to live independently. Although done on an ad hoc basis (at least until the introduction of the Independent Living Fund), many disabled people were acquiring direct payments - often through local authorities - in order to arrange their own "care". The principle of "community living" was therefore well-established before the government began to look seriously at community care legislation.

The idea of the NHS and Community Care Act was partly to bring (much-needed) structure to services provided by different agencies - health authorities, local authorities and the private and voluntary sector. However, with the removal of the right to receive direct payments, many believe that the introduction of the Act has led to an increase in the power of service providers, and a reduction in disabled people's control over our own lives. This, combined with the closure of many long-stay institutions, with limited services available to take their place, has led many people to conclude that the Act is a cynical attempt by central government to curb public spending.

Wigan

Complaints Procedures
Wigan Social Services
Civic Centre
Millgate
Wigan

Tel: 0942 44991 ext 2816



Customer Relations Manager
Stockport Social Services
Ponsonby House
Edward Street
Stockport

Tel & Minicom: 061 474 4069

Tameside

Citizens Advice Bureau
9 George Street
Ashton-under-Lyne

Tel: 061 330 2156

Tameside Welfare Rights Unit
200 Market Street
Hyde

Tel: 061 330 2156

Trafford

The Complaints Receiving Officer
Trafford Social Services
Warbrick House
Washway Road
Sale

Tel: 061 871 2101 ext 4795

Some relevant events leading up to the legislation:

1986 - The Social Security Act is introduced leaving many disabled people worse off.

1986 - The Audit Commission points to a "perverse incentive", in that it was easier to get into an institution than to get care in the community.

1988 - The Independent Living Fund is set up (partly in response to the Social Security Act) to help "severely" disabled people with the costs of employing personal assistants to enable them to live independently in the community.

1988 - The Griffiths Report is published. Proposals included a Minister for Community Care and ring-fenced grants.

1989 - The Government produces its policy in a White paper called *Caring for People*. There was to be no Minister and no ring-fenced grants.

1990 - The NHS and Community Care Act becomes law (to be phased in over 1991 - 1993).

1992 - Suspension of new applications for Independent Living Fund (introduced with little publicity or warning)

1993 - New Independent Living Fund arrangements introduced removing from new applicants the option of receiving direct payments in order to employ personal assistants.

- 1993 - The all-party Commons health committee report
Community Care - The Way Forward calls for a
 Care Charter to set minimum standards and defined
 service targets.

The main provisions of the Community Care Act are:

- * Preparation and publication of local authority
 "Community Care Plans".
- * Introduction of Assessments
- * Introduction of a complaints procedure
- * Empowering the Secretary of State for Health
 (Virginia Bottomley) to inspect, make enquiries and
 make directions.



Rochdale

Rochdale Law Centre
 Smith Street
 Rochdale, OL16 1HE

Tel: 0706 57766

Salford

Salford Law Centre
 498 Liverpool St
 Salford

Tel & Minicom: 061 736 3116

The Complaints Officer
 Salford Social Services Department
 Crompton House
 100 Chorley Road
 Swinton, Salford

Tel: 061 793 2203

Stockport

Welfare Rights Unit
 Ponsonby House
 Edward Street
 Stockport

Tel: 061 474 3091

Questions & Answers

What is Community Care?

The government states “*Community Care means providing the right level of intervention and support to enable people to achieve maximum independence and control over their own lives*” - Caring for People, White Paper 1989.

Does the Act provide more money?

No. Despite the window dressing of the Act it is not about providing more money. It is about transferring a large part of the costs from an ‘open ended’ budget under the Department of Social Security to a cash limited and discretionary budget under Social Services.

What happens to the Independent Living Fund?

The ILF has now been split into two sections: the Independent Living (Extension) Fund and the Independent Living Fund 1993.

The Extension Fund continues to provide direct payment to disabled people who were Independent Living Fund applicants/clients up to November 1992. However, there are concerns about how the Fund will deal with a rising cost of living, and recent moves to monitor the employment details of personal assistants has caused some concern amongst ILF users.

The 1993 Fund will provide “top-up” money to meet the cost of providing services for disabled people whose “care needs” cost

North Manchester Law Centre

Padgate St

Collyhurst

Manchester

M10 7UX

Tel: 061 205 5040

South Manchester Law Centre
584 Stockport Road

Longsight

Manchester

M13 ORQ

Tel: 061 225 5111

Wythenshawe Law Centre
Fenside Road

Sharston

Manchester

M22 4WZ

Tel: 061 428 5929

Oldham

Oldham Law Centre

79 Union Street

Oldham

OL1 1HL

Tel: 061 627 0925

more than £200. The Fund will meet additional costs up to a ceiling of £500 (i.e. a top-up of £300). Anyone whose needs exceed this figure will face the threat of being consigned to an institution. Other new arrangements mean that the ILF will no longer provide financial support for services for people who are over 65, or for people who are terminally ill.

What does the Community Care Act Include?

It is a mass of regulations, directives, circulars and guidance from the Department of Health.

Does the Act replace past legislation?

No. Instead of taking the opportunity to draw all the existing bits of legislation together in the Community Care Act, we are still left with most of them, some of which can be used and some of which are still not in force.

Does Community Care mean living in your own home?

No. The arrangements for the Independent Living Fund (1993), set in place by the Disability Grants Bill, mean that if the weekly cost of community support to an individual exceeds £500, there is a very real chance that they may be required to enter into institutional care.

Department of Health publicity and information leaflets also place great emphasis on increased choice of residential setting - not so much whether you go into a nursing home, rather which one would you prefer?!

Further Information

Bolton

Bolton Welfare Rights Unit
Le Mans Crescent, Bolton

Tel: 0204 380460

Customer Services Officer
Social Services Department
Le Manns Crescent, Bolton

Tel: 0204 22311 ext 7256

Bury

The Complaints Officer
Social Services Department
Craig House
Bank Street
Bury

Tel: 061 705 5488

Manchester

Public Relations Unit
Social Services Department
Town Hall, Manchester

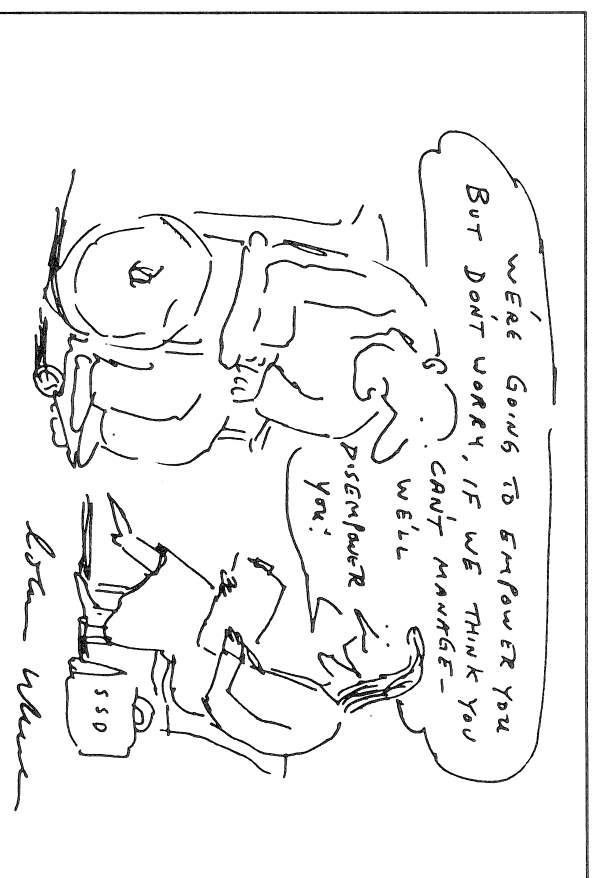
Tel: 061-234 3880

- * The right to be told who the panel members are and what their positions are.
- * The right to have someone with you - partner, friend, carer.
- * The right to be represented - someone from a law centre or Citizens Advice Bureau, partner, friend, carer.

Planning

Local authorities must prepare and publish Community Care Plans on an annual basis. The plans should contain things like:

Strategic objectives, Policy Statements, details of expenditure, and proposals for assessment.



Does Community Care equal Independent Living?

No. Disabled people have broadly defined “independent living” as the right to control the very basic decisions in their lives which most people take for granted, and the right to have the same choices of where and how they live (and who they live with!). For many disabled people - particularly those who rely heavily upon personal assistance - being in control of their own lives and making independent choices has been synonymous with the right to hire and fire the people who provide that assistance.

The new ILF arrangements remove the right of disabled people to apply for direct payments to employ their own assistants; and the Disabled Persons (Services) (No. 2) Bill, which would allow local authorities to make direct payments to individuals, has consistently been opposed and defeated by the government (despite having been passed by the House of Lords and enjoying wide cross-party support in the Commons).

How do you find out what's in your local Community Care Plan?

Local authorities are required to publish and make available copies of their local Community Care Plan. This can mean that your local authority might have copies available for circulation, free, at a cost or may be available for viewing at your local library. You have a right to see the Plan - contact your local social services department for details of how to do so.

Assessments, Complaints & Planning

Assessment

The local authority must carry out an assessment of a person's needs for community care services if:

- * it appears to the authority that any person may be in need of services.
- * requested by the individual concerned if they are a disabled person.
- * If requested by carers (in certain circumstances).

NB. Services can still be provided without a proper assessment if they are required urgently.

Complaints

Under the Act each local authority must have a complaints procedure, although there is some flexibility for how an authority runs its complaints procedure.

What you can complain about:

- * The services that are available (e.g. Why can't I get transport to take me to the library when I know they will help me when I get there).

- * The services that you receive (e.g. They only give me meals that are English food - I want Halal food).

- * The services that you need (e.g. I haven't heard from my social worker in three weeks).

- * The services that you have a right to in law (e.g. I am a 26 year old blind woman, and I've been told I can't have an orange badge for my car. Is this correct?).

NB. Individuals AND organisations have the right to make a complaint.

What rights you have:

- * The right to have the complaints procedure explained to you in simple terms by a senior services officer.

- * The right to make a full written complaint.

- * The right to ask for help in writing your complaint.

- * The right to a written reply telling you that your complaint will be investigated, and/or an explanation of the position within 28 days. Local authorities must make a full response within 3 months.

- * The right to appeal.

- * The right to a written reply, and the right to be told the time and place of the appeal meeting within a reasonable time before it takes place.

Taking It Further

If you are fed up with excuses, tired of talking without any action, and happy to get advice, these are things which can be used to take it further. The advice you need is about which one to use, how to threaten to use them, and whether to move from one to the next to keep increasing the pressure.

- Social Services Complaints Procedure
- Seeing personal information held by the Council about you. (Access to Personal Files)
- Monitoring Officer
- Ombudsman
- Court and Judicial Review
- Going to the press.

Whatever decision the Council is making which is affecting your life, they must properly administrate, consider all relevant factors, not be biased, not make mistakes, and not just mess about. They must follow the laws against race and sex discrimination, and the laws relating to disabled people. The law still does not ban other kinds of discrimination - e.g. against lesbians or gay men, but the courts can intervene where a Council is doing something they believe no reasonable council could do.

Practical Advice

As disabled people we get used to people who are supposed to provide us with our services telling us why, they think, we are not able to have them - e.g. social services. After a while "reasons" begin to sound like "excuses". We spend lots of time, a great deal of effort and money (that we do not have) trying not only to enforce our rights but to get clear, accurate information about what we are entitled to in the first place.

Here are some useful things to bear in mind when dealing with your local council.

Check Excuses - Here are some favourites:

"It's the law." Ask exactly what law they are talking about, what is the name of the Act of Parliament (for example, the NHS and Community Care Act 1990), and what is the number of the section of the Act, or what court case decided this is the law. Then contact your local advice agency, law centre, or solicitor to check whether they are right and whether you have any other legal rights.

"It's Council Policy." Ask for a copy of the policy, and ask who approved it and when and how. This will make sure that the Social Services officers check their facts. Then get it checked yourself, as above. Some Council policies have to be published, and generally you have a legal right to expect the Council to stick to its policies in most cases. But equally the Council must not stick to its policies too rigidly. They must look into your case FIRST, and not just say things like "only disabled people who are elderly are entitled to a telephone".

“There’s no money.” As this government does not like public spending, it is often true that the government will not allow the Council to spend money on something obviously sensible which you are asking for. Ask why there is no money (have Social Services forgotten to ask for it, or have they decided that what you are asking for is not important enough to put money aside for).

Also check the fact that where the law says the Council must do something, the fact that they have no money for it may not be an allowable excuse (e.g. helping you find a helper). Get advice on this.

Talking to social Services

If you are finding you are not getting anywhere with talking to Social Services:

Put it in writing: You don’t have to be the world’s greatest letter writer. Just put down what you want to say the way you would normally say it. If you are happier phoning or visiting, do that, but remember to send a quick letter covering what you said and what they said.

Put the date on the letter and say in it that you are keeping a copy. Try to get a photocopy made, at a library or at an advice agency for example.

Keep a diary: If things are happening all the time to do with your situation (for example, the Council keep rearranging then cancelling appointments with you), keep a basic diary so that you have a record of exactly when what happened. It is easy to forget these details later on, and dates can be very important.

Give time limits: Things will only keep dragging on if you do not keep making sure Social Services or Housing know when you expect them to do something by. Say what you will do if they have not done it when the time you set is up. Try to take it further in stages, however quickly or slowly you go. You could say anything from “*if you do not get me somewhere to live by tomorrow afternoon I will see solicitors and ask them to take you to court straight away*”, down to “*if you do not reply to this letter inside the next two weeks I will want to make a formal complaint*”.

Stick to the times you give them, so when the time runs out make sure you get back to them again (Advice agencies and law centres should be able to help you with writing or if you need an interpreter).

Get Advice

It never does any harm to find out what your position is and to find out more about your rights. You can get free advice from Citizens Advice Bureaux or law centres.

You may be entitled to free Legal Aid to see a solicitor, or many solicitors’ firms do free advice sessions. Make sure you use one who knows about the area of law which affects you. You can find out about this as well as how to make an appointment, and details about access by contacting your local law centre.

All these agencies provide confidential services, and will keep your business private and not tell anyone about it unless you say so. If you do not know where your local agency is, contact GMCDP who will be able to give you that information.