

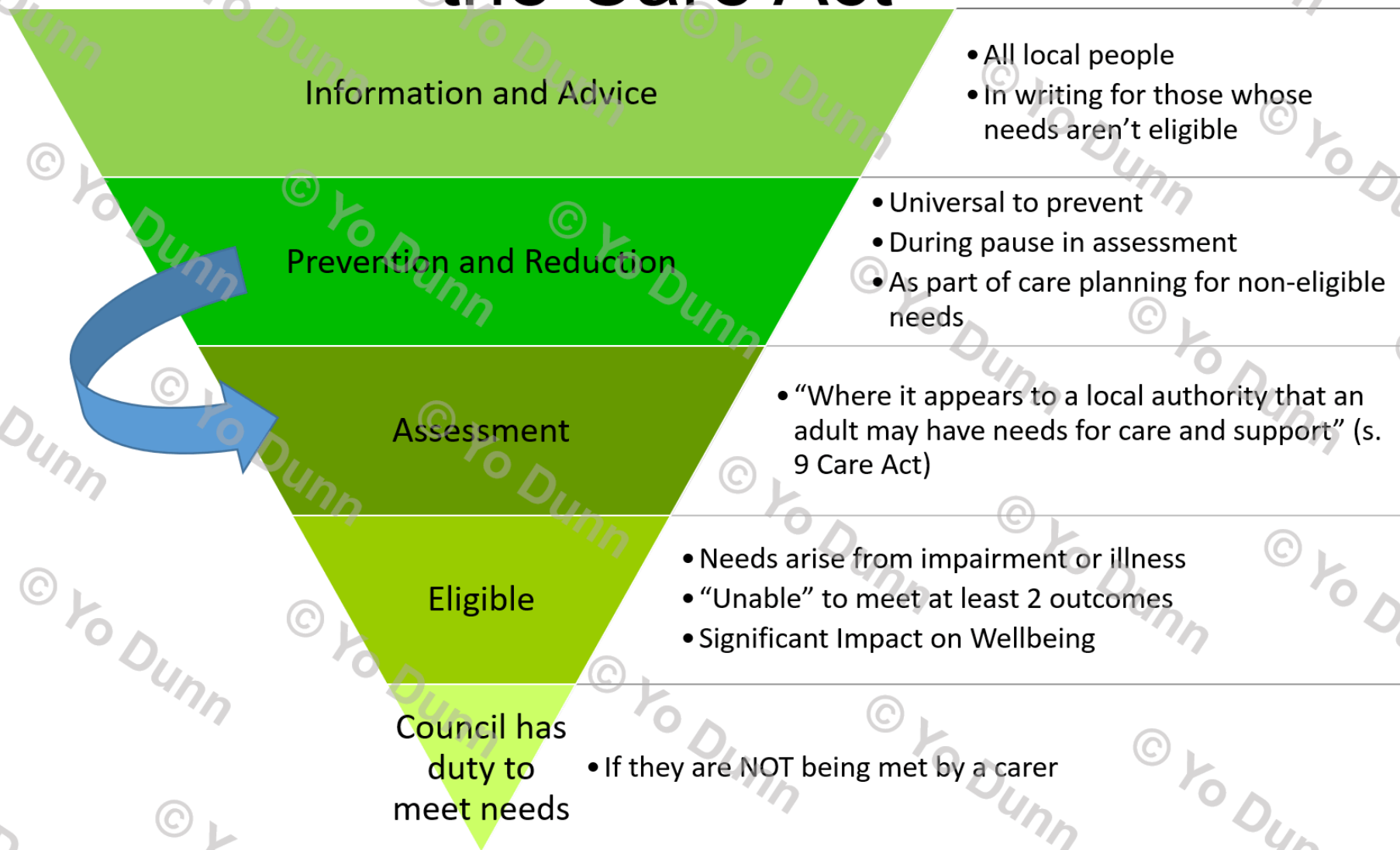
A selection of slides from legal framework courses for Adult Social Care

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The adult “customer journey” under the Care Act



Transitions under the Care Act



Transition assessment required:

“Where it appears to a local authority that a child is likely to have needs for care and support after becoming 18” (s.58)

So:

- Children in receipt of children’s services
- EHCPs
- Special Schools
- Others?

- End of the “cliff edge” – transition a process
- Children’s support **must** continue until adult support in place or denied
- Transition assessment **must** include eligibility decision
- When?
“at the right time for the young person”
“There is no set age”

Care Act guidance 16.7

Care Act Advocacy

- **“substantial difficulty”** = lacks capacity + **some who have capacity, but would have substantial difficulty** e.g. HF autism
- Who is suitable as an informal person to support the adult’s involvement?

MUST BE	MUST NOT BE
Able (i.e. knowledge, skills) to support THEIR involvement	Anyone with a conflict of interest (e.g. relative of person alleged to have caused harm, family member with strong views)
Willing – i.e. they understand the role and are willing to take it on	Anyone who disagrees with the local authority on a material issue
Acceptable to P (or best interests if P lacks capacity)	Paid worker or Professional involved in their care

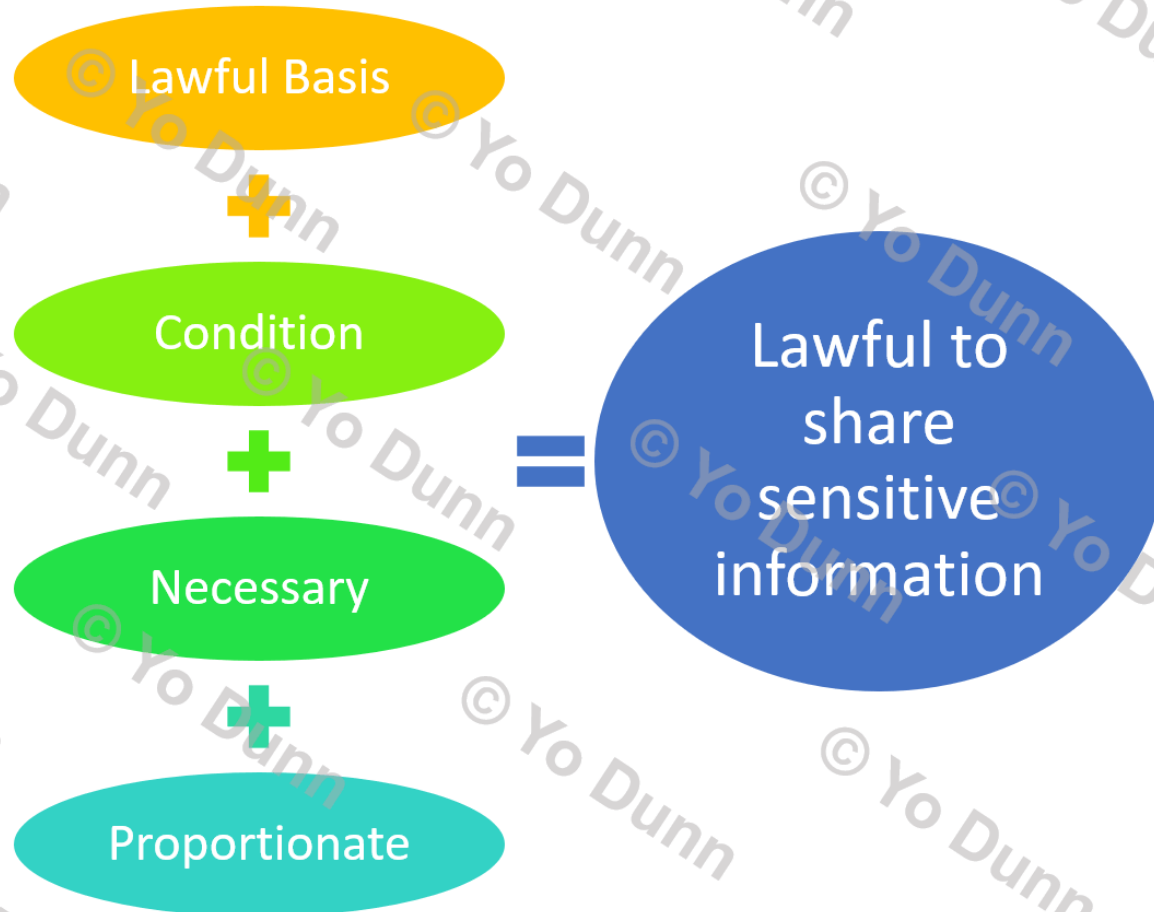


A woman with dark hair, wearing a light pink shirt, is shown from the chest up, looking upwards and to the right with her hand on her chin in a thoughtful pose. Surrounding her head are numerous black-and-white line-art icons representing various life goals and aspirations. These include a sun, a house, a car, a baby stroller, a graduation cap, a diploma, a sailboat, a couple holding hands, a dog, a couple in wedding attire, a ring, a bar chart, a line graph, a heart, a diamond, a palm tree, a bird, a globe, and a family of four. The background is white with faint, large, stylized letters 'Dunn' visible.

Ways of meeting eligible needs could include:

- But needs must be met **appropriately** *R (on the application of McDonald) v Royal Borough of Kensington and Chelsea* [2011]

Information sharing and confidentiality: How GDPR works



Act fairly



Everyone
consulted/involved?



Everything relevant
considered?



Irrelevant not considered?



Professionals acted
without bias?



Human Rights

Type	Examples	What that means
Absolute rights	Right to life (article 2) Right not to be subject to torture (article 3)	No-one is allowed to breach these rights
Limited rights	Right to liberty (article 5)	There are certain limited circumstances when a person can be legally deprived of liberty e.g. criminal justice, 'sectioning', DOLS
Qualified rights	Right to home, family and private life (article 8)	They can be restricted in some circumstances and within limits. Generally, when outweighed by a competing right.

Mental Capacity Act

1 Capacity assumed

2 All practicable
steps

3 Unwise decisions

4 Best Interests

5 Least Restrictive



When might you need to undertake a capacity assessment?

- When there is a particular decision to be made

E.g.

Where to live?

Whether to consent to care arrangements that amount to a deprivation of liberty?

Whether to have contact with a particular person?

- And you have reason to be uncertain about whether the person is legally able to take the decision for themselves



When to (and when not to) request a Mental Health Act Assessment

Mental Health Act Assessment

The person:

- has a mental disorder

and either:

- needs assessment to determine what mental health treatment they need;
- Or needs mental health treatment; and
- currently poses such a risk to themselves or others that can only be done by detaining them in hospital

NOT Mental Health Act Assessment

- An emergency situation requiring emergency services
- A less restrictive option is suitable (e.g. informal admission)
- Physical healthcare should take precedence
- Service provision (e.g. adult social care assessment), rather than restrictive detention, could resolve the issue

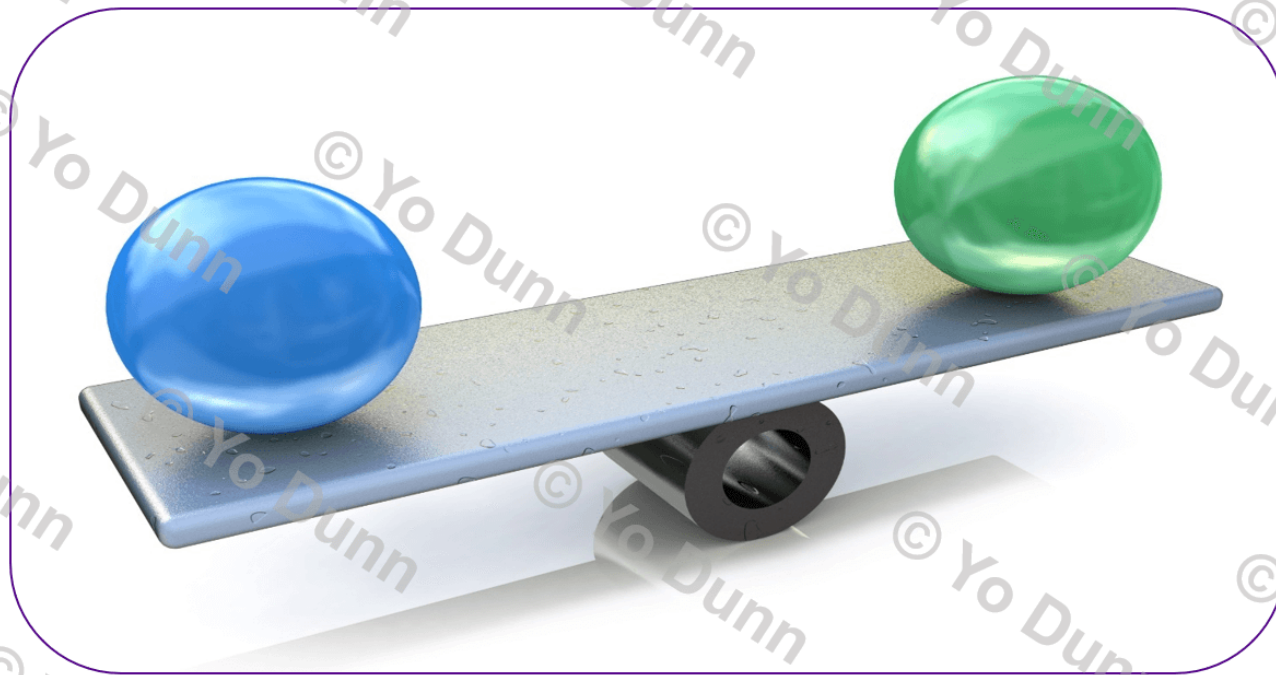


Human Rights balance

Duty of Care

vs

Right to Self-Determination



Legal basis of safeguarding



“acting on the basis of safeguarding concerns gives no additional powers to local authorities to intervene in the lives of vulnerable adults – those powers have to be found either in statute or in the common law.”

Somerset vs MK [2014] EWCOP B25

Consent, Capacity and Safeguarding

- Although it is considered good practice to seek the adult's consent to a Safeguarding Enquiry, consent is **not** required
- S.42 duty to make enquiries is a duty on the local authority. You cannot compel the adult to co-operate, but you must still do your best to enquire
- Safeguarding enquiries must be made **unless**:
 - The adult has capacity to do so and refuses consent to an enquiry; **and**
 - There is no undue influence from anyone else; **and**
 - There is no risk to others; **and**
 - The local authority does not owe any further duties to the adult (such as to uphold their human rights)



Not Safeguarding does not mean doing nothing

- Appropriate channelling of referrals
e.g. Request for service
- Using decision support guidance to filter and risk assess referrals

Valid safeguarding actions include:

- Recording
- Information sharing
- Monitoring
- Considering options and deciding not to act (recording rationale)



Legal Toolbox

Care Act

Mental Capacity Act

Mental Health Act

Housing/homelessness
duties

Inherent Jurisdiction

Other powers and
discretions

Involving the adult throughout: advocacy, and full involvement in best interests decision making

