The Significance of *R(BG and Anor) v Suffolk CC (2021): Meeting ‘Eligible Need[s]’ in Social Care?*

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Abstract

The reasoning in Suffolk offers a partial redefinition of the notions of wellbeing and individual need, via its detailed analysis of the legislative frameworks associated with the making - and interpretation - of needs assessments. The decision under-scores the subjective nature of many such decisions which involve a conceptualisation of eligible needs, particularly where these are made against a backdrop of austerity-led funding cuts, and rapid changes to social care law and policy. In terms of promoting a juridical right to be adequately supported and/or cared for, the decision may yet prove to be very useful: it spotlights the impacts of resource-rationing and questions how a right to human dignity might best realised when finite, scarce resources are being further whittled-away. The right to respect for one’s home, family, and private life under Article 8 (ECHR) is not overlooked here. Though not explicitly highlighted within the judgment, there are clear reminders of the state’s duty to actively promote and protect family life, given the importance of our ‘domestic, family and personal relationships.’ The links between personal wellbeing and strong family ties are examined in several places as is human dignity via the right to individual autonomy. The decision - pending appeal - should be of interest to anyone working to promote the rights of familial carers and the cared-for or advocating the right to be afforded adequate levels of social care and state support.

‘The concept of ‘meeting needs’ is intended to be broader than a duty to provide or arrange a particular service. Because a person’s needs are specific to them, there are many ways in which their needs can be met. The intention behind the legislation is to encourage this diversity, rather than point to a service or solution that may be neither what is best nor what the person wants.’ (Statutory Guidance (2015, 10.10) on the Care Act 2014).

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The recent decision in \textit{R(BG and Anor) v Suffolk CC (‘Suffolk’)}\textsuperscript{1} is, pending its appeal to the Court of Appeal, a significant one for several reasons. It can at the very least be given a cautious welcome by health and social care rights advocates. Its outcome suggests that, for now, such things as recreational activities and holidays, for both service users and those who provide care for them – often around the clock - can be framed as eligible care needs rather than regarded or dismissed as unwarranted, unnecessary ‘luxury’ items. The decision is a useful reminder that the very notion of ‘the holiday,’ for both carers and the cared-for, often represents as an entirely essential break from the rigours of daily life - and perhaps also from one’s caring duties, to some extent - in the sense of offering a short period of much-needed respite and engagement with the wider community. Breaks from the daily norms of ‘cared-for’ living are often prone to being seen as non-essential goods or services, especially when attempting to convince decision-makers and budget-holders that certain items should be categorised as much-needed. And yet some types of respite activity clearly and actively address or prevent a number of longer-term health issues. The staving off or managing of social isolation, loneliness, depression, or chronic anxiety, for example, can clearly minimise or prevent the need for much more costly acute mental health-led interventions at some point in the future. Local authorities should be particularly mindful of their statutory obligation to ‘adopt a flexible approach that allows for a focus on which aspects of wellbeing matter most to the individual concerned’ (2015 Guidance, para 11). The reasoning in \textit{Suffolk} also offers, at least in part, a redefinition of the notions of wellbeing and individual need, via its quite detailed analysis of the legislative frameworks that are associated with the making - and interpretation - of needs assessments. The decision also underscores the often highly subjective nature of many decisions which involve the conceptualisation of eligible need, particularly where these are being taken against a backdrop of ever harshening, austere landscapes of funding cuts, and rapid changes to social care law and policy. In terms of promoting a more meaningfully juridical right to be adequately supported or cared for, the decision may yet prove to be quite useful: it spotlights the impacts of resource-rationing and calls into question how the notion of a right to human dignity might somehow be realised when already-scarce resources are further whittled-away. There is a wider significance too in relation to human rights: the importance of the right to respect for one’s home, family, and private life, as enshrined within Article 8 of the European Convention on Human Rights (ECHR) is not overlooked here. Though not always explicitly highlighted within the judgment, there is a clear reminder of the state’s duty to promote and protect family life, for example by stressing the importance of our ‘domestic, family and personal relationships.’\textsuperscript{2} The clear links between personal wellbeing and strong, positive family ties are similarly examined at a number of points. The underpinning principles of human dignity and the right to achieve and enjoy some level of individual autonomy – central to most theories on health

\textsuperscript{1} EWHC 3368 (Admin).

\textsuperscript{2} ibid. at 106, which noted that those ‘aspects of well-being which are of particular relevance to the issues in this case are:”(b) physical and mental health and emotional well-being”.”(f) participation in … recreation”.”(g) domestic, family and personal relationships.” (emphasis added).’ See also 2(2)(g) of the 2015 Regulations which concerns ‘Developing or Maintaining Family or other Personal Relationships.’
and ethical treatment policies (Barclay 2018; Kadivar et al. 2018; Kelly 2017) - are also touched upon, throughout. As such, the decision, pending appeal, should be of interest to anyone seeking to promote the rights of familial carers and the cared-for or hoping to advocate for a more meaningfully juridical right to be afforded adequate levels of social care and state support. It is, after all, often the inability of individuals to access sufficient levels of state funding which prevents the provision of familial care or adequate systems of support.

The Facts in Brief

The High Court found, via Judicial Review, that Suffolk County Council had erred in law by deciding that the concept of support (under the Care Act 2014) should not include the funding of recreational activities – such as family-shared holidays or day trips. These activities had previously been seen as a key form of respite for the family concerned, and therefore deemed essential to the well-being of the two claimants. Here, two physically disabled, autistic brothers were being cared for by their mother, on a round the clock basis. As was noted at several points in the judgment, the brothers had previously suffered egregious abuse at the hands of stranger-carers, namely during their time at their local day centre: they were, as a result, unable to tolerate the presence of external carers within their home, or indeed to ‘trust anyone outside the family.’ Prior to their most recent needs assessment, the family had been provided with sufficient levels of funding to enable them to have an annual family holiday: direct payments had also been made to them so that they could together engage in certain recreational activities. These were, again, made possible only through having the essential, continuous support of their mother/carer, without whom, it was argued, they would have been simply unable to leave their house, given the nature and extent of their disabilities and their earlier experiences outside of their own home. The direct payments were revoked on the purported basis that such things as travel, accommodation, and entrance fees to attractions might not count as - or fall within the definition of – eligible Care Act services. One key question before the High Court was whether or not the local Council had had the legal power to make such funding available: the Council had argued, incorrectly it later transpired, that they did not possess such authority. They had sought to rely upon a too-narrow, rigid interpretation of the legislative framework, which is a not altogether uncommon trend in much of the decision-making carried out by English councils: it is occasionally identified and called out as such by the Ombudsman (Schwehr, 2018). The Court stressed here

3 Their 2011 local authority-assessed care packages (including direct payments) permitted them to have much-needed access to the community by enabling such things as family outings, various activities, and holidays. After 2013, their ‘respite budget’ also covered such needs.

4 Suffolkaabove, note i, at 9.

5 See further B Schwehr, ‘Where councils are going wrong in their implementation of the Care Act’ Community Care(2018) https://www.communitycare.co.uk/2018/06/08/councils-going-wrong-implementation-care-act/ (last visited 2nd April, 2022). Schwehr argues further that ‘In legal terms… loose language could indicate predetermination or a fetter of assessment or care planning discretion; it could indicate a disregard of the principle that resources are relevant to how needs must be met, but not to whether.’
that the Council had also, somewhat worryingly, ‘tailored’ the two brothers’ Needs Assessment so that it might somehow be seen to better ‘accord with the Council’s restrictive reading of the scope of the Care Act 2014.’ In other words, the care and support provided by the disabled claimants’ mother was being framed as the brothers’ only identified need: as she was still able and willing to continue caring for them - despite the sharp loss of previously given state support, and her evident exhaustion - it was argued that the Council’s statutory obligations under s18 (7) of the 2014 Act had therefore been fully met. In addition to those impacts that are very relevant to issues of inequality and passive discrimination (for example the often quite gendered aspect of the caring roles taken on by unpaid maternal, female carers) such a narrow and convoluted approach suggests a concerning disregard for the importance of social services funding of caring in general. By distancing it from the more emotive notions of health care and disability rights, such a policy also often tends to essentially place social care beyond the reach of certain human rights protections. This is especially so of those rights (non-discrimination, equality of treatment) which might serve, to some extent at least, to better protect the often most vulnerable members of society – carers and the cared-for - from the harshest effects of ongoing austerity measures and sharp cuts to key services and formerly-granted support packages.

The Court rejected the Council’s arguments, adding that their wrongful interpretation of the remit of their own statutory powers had very clearly ‘tainted’ the Eligibility Assessments by leading to a misguided exclusion of aspects of the Claimants’ needs. Moreover, the assessments which had been carried out here seemed to have been ‘deliberately drafted’ in the light of an progressively over-restrictive policy stance on just how the concept of eligible needs might or should be interpreted - or translated - into the provision of key services. In sum, their increasingly austere focus served to wrongfully exclude financial support for much-needed essential goods and facilities (including the costs of accessing recreational facilities) from the council’s ‘powers’ remit. As Lang J concluded, she was ‘unable to find any statutory basis for the restrictive interpretation of needs adopted by the Council.’

The Care Act 2014 s.1 (1) clearly created a ‘general duty’ on the part of local authorities to seek to promote the well-being of claimants. Needs assessments for adults must therefore make reference to s.1(2) of the Act. The Care Act Eligibility Assessments which had been carried out in 2019 and 2021 respectively, had found that the needs of the two brothers – and their inability now to ‘achieve two or more outcomes’ as listed in

6 *Suffolk* above note i, at 142.
7 ibid.
8 ibid. at 143.
9 ibid. at 102.
10 ibid. at 103. The duty is broadly set out in s.1(2) of the 2014 Act, with further explanation contained in the 2015 Statutory Guidance (paragraphs 1.1 to 1.11) (issued under s. 78 of The Care Act 014) ([https://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance](https://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance), last visited 29th March, 2022).
11 ibid. at 104.
the 2015 Regulations – meant that there was likely to be a significant impact upon their wellbeing. 12

Especially relevant here were those adversely impacted-upon aspects of their well-being, such as physical and mental health and their emotional welfare, via their unmet need for some form of participation in recreation, in addition to their domestic, family, and personal relationships. The council’s decision to remove former funding was made in spite of Care and Support Plans having been drawn up by the Council’s own social workers: their reports had stressed the brothers’ desire to access recreational activities within the community and indeed highlighted the various consequent benefits which the brothers would very likely derive from taking part in such activities. The Norfolk and Suffolk NHS Foundation Trust had also drawn up Care Plans which pinpointed the beneficial nature of such activities in direct relation to their mental health and well-being needs and had recommended the continuation of such financial supports. As such, it appeared that.

…the Claimants’ Care Act Eligibility Assessments were deliberately drafted so as to reflect the Council’s restrictive stance on eligible needs, with the focus on any need for care, and the exclusion of financial support for goods and facilities, in this case, the cost of accessing recreational facilities. 13

Given that the mother-carer in Suffolk was willing and able to provide for ‘the only need identified’ (that is, continuous and ongoing care and support from her) the Council had concluded that it was under no duty to meet their needs. Lang J found however that the Council ‘ought to have considered whether or not to exercise its powers under Sect. 19 CA 2014 before reaching its decision to cease all direct payments to the Claimants.’ 14

The Wider Significance of Suffolk?

Such a narrowly focused re-definition (of how a response to eligible need might best be effected by local authorities) reflects a wider national context of welfare-provision review in general, particularly in terms of how direct payments could or might be used to support the daily care needs of vulnerable persons. Although the approach adopted here refused to address holiday costs per se, the Council still seemed to suggest that the support needed ‘to achieve’ a holiday (rather than in any way enjoy it, presumably) might perhaps be deemed eligible for Council funding as ‘a Care Act eligible need.’ 15 Such thinking is grounded in the contention that certain ‘universal costs’ (which arise for everyone irrespective of whether or not they are disabled, or in some way adversely affected by long term health needs, say) are not supposed to be included under these legislative and policy frameworks, despite the fact that the

12 ibid. at 105 (in respect of all the aspects of well-being set out in Sect. 1(2) CA 2014).
13 ibid at 135
14 ibid. at 158.
15 ibid. at 53.
A charging framework is the key means for levelling out subsidy across the whole client population. Whereas one can argue that this might be the case for food, rent, and other daily living expenses, the cost of such items as food, travel, or entrance tickets can perhaps be seen as the key components of any respite-led day/week out, surely. These were being categorised here however as not falling within the definition of care and support or the other, broader concepts (such as facilities) under s.8: this occurred via a too-restrictive interpretation of the current legislation. And yet, s.1(1) of the Care Act 2014 clearly enshrines a general duty (rather than a merely discretionary power) to actively promote an individual’s well-being, whenever a local authority is exercising its functions under Part 1 of the Act.

That said, it is important to note that there is no clearly juridical right to financial support outlined within the Care Act’s provisions. There is a right to a direct payment (i.e. money in lieu of some other means of meeting a need) and there are key passages that explain that ‘support’ must mean something other than ‘care.’ Because carers are often in need of money however, as the Court noted, the fact that they can qualify for a budget would be highly problematic if it meant in practice that they could not be given cash. A carer’s support budget can be converted into cash via a carer’s direct payment, provided the conditions for this are met, but that is only because direct payments are the cash-based deployment option, which one can have instead of receiving the service (or other thing) in question, in most cases. This is significant, and it is unsurprising that the Council have since been granted leave to appeal. Despite the broad extent of the means to fulfil or discharge the legislative purpose within the distinct NHS legislation – in terms of how it responds to need – there is case law confirming that the one thing it did not extend to authorising was the provision of general monetary support in cash. The decision in Suffolk seems however, for the moment, to hold that the funding needed for a holiday can be seen as ‘support’ and indeed perhaps as a response to an assessed eligible need, within certain contexts. The consumption costs of a trip, activity, or outing for a person, if sufficiently mainstream (i.e. something that anyone could embark upon, and which require or attract expenditure) are not easy to fit within the narrow definitions of care and support seen within the recent case law, however.

‘Support’ has been found to connote something in the way of ‘looking after’ someone, rather than merely ‘financially subsidising’ a person’s choices. The meaning of facilities, as opposed to support, will likely become the focus, once this case goes to appeal. Likewise, in view of the addition of the word ‘facilities’ in s.8 of the 2014 Care Act, it is clear that certain responses to individual need can now go a bit wider

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16 s. 1 (2) aims to define well-being as relating to any of the following: (a) personal dignity (including treatment of the individual with respect); (b) physical and mental health and emotional well-being; (c) protection from abuse and neglect; (d) control by the individual over day-to-day life (including over care and support, or support, provided to the individual and the way in which it is provided); (e) participation in work, education, training or recreation; (f) social and economic well-being; (g) domestic, family and personal relationships; (h) suitability of living accommodation; (i) the individual’s contribution to society (emphases added).

17 See for example Harrison [2009] EWHC 574 (Admin) which made it clear that the definition of ‘services’ within the NHS legislation did not cover the concept of cash: separate legislation specifically providing for the provision of personal health budgets was therefore required.
than basic levels of care and support: these must be able to extend to paying out for much needed goods or facilities, and thus converting that expenditure into a direct payment. ‘Respite’ is not simply a need - or some response to need - that is different in nature to any other. Rather, respite is a compendious term for the authority’s duty, and in effect a description of how eligible needs might be met, in a number of different ways, when no other form of informal care is available. Additionally, it has long been accepted as best practice that the concept of well-being should also include some level of personal dignity and a measure of respect for individual users’ autonomy. Participation in recreation is specifically mentioned within The Care and Support (Eligibility Criteria) Regulations (2014), as are such matters as social and economic well-being, emotional and psychological welfare, and the promotion of familial and personal relationships within the ‘well-being function’ itself.\textsuperscript{18}

The Care and Support Statutory Guidance (2015) further confirms that ‘well-being should be regarded as ‘a broad concept.’\textsuperscript{19} There is not meant to be a hierarchy of needs: indeed, all needs ‘should be considered to be of equal importance when taking into consideration the notion of ‘well-being’ in the round.’\textsuperscript{20} Promotion of one’s well-being requires therefore that improvements should be actively sought ‘when carrying out a care and support function in relation to an individual at any stage of the process,’ not least when assessing their needs.\textsuperscript{21} Well-being should therefore include ‘an intentionally broad range of the aspects of a person’s life [to] encompass a wide variety of specific considerations depending on the individual.’\textsuperscript{22} The 2015 Guidance (1.10) also ostensibly emphasises the need to promote or preserve human dignity and personal autonomy:

The concept of meeting needs recognises that everyone’s needs are different and personal to them. Local authorities must consider how to meet each person’s specific needs rather than simply considering what service they will fit into. The concept of meeting needs also recognises that modern care and support can be provided in any number of ways, with new models emerging all the time.\textsuperscript{23}

\begin{footnotesize}
\begin{enumerate}
\item[\textsuperscript{18}]\url{https://www.legislation.gov.uk/ukdsi/2014/9780111124185} (last visited March 31st 2022).
\item[\textsuperscript{19}]Statutory Guidance (2015) above, note x.
\item[\textsuperscript{20}]Suffolk, above, note I, para 110.
\item[\textsuperscript{21}]As Clements L., et al. ‘Community Care and The Law (2019) Legal Action Group have also observed, during the Care and Support Bill’s drafting the scrutinising Committee had expressed the hope that the follow-up Guidance would ‘make clear that the list is not intended to limit the ways in which a local authority might meet any eligible needs or agreed outcomes, removing any possible ambiguity on that point’ (at para 170). Arguably, the Council’s approach in this case disregards this.
\item[\textsuperscript{22}]See further The 2015 Guidance at para 1.8. ‘A local authority can promote a person’s wellbeing in many ways. How this happens will depend on the circumstances, including the person’s needs, goals and wishes, and how these impact on their wellbeing. There is no set approach – a local authority should consider each case on its own merits, consider what the person wants to achieve, and how the action which the local authority is taking may affect the wellbeing of the individual.’
\item[\textsuperscript{23}]Suffolk, above note i, at 114
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Analysis: [Re]Defining the Concepts of Needs, Care, and Support?

As the Court observed in *Suffolk*, the phrase “care and support” is not defined within the 2014 Care Act.\(^\text{24}\) It was stressed that these two words - and the concepts they represent - are not synonymous: Parliament likely added the word ‘support’ to indicate that this may or should mean something additional to basic ‘care,’ such as something which differs from hands-on physical attention. This distinction is particularly relevant to many carers, given that ‘ordinarily, a carer does not need “care” but he or she may well need “support.”’\(^\text{25}\) A broad interpretation is again key: referring to the 2015 Guidance, it was reiterated that local authorities simply must have regard to the well-being principle of the Act, given that

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\ldots \text{it may be the case that the carer needs a break from caring responsibilities to look after their own physical/mental health and emotional wellbeing, social and economic wellbeing and to spend time with other members of the family and personal relationships. Whether or not there is a need for replacement care, carers may need support to help them to look after their own wellbeing.}\(^\text{26}\)
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The broad concept of *meeting* needs remains an important one, as evidenced by the departure from those older terminologies that tended to focus largely upon the provision of services [10.10], and quite specific ones at that, such as the need for a ‘wireless’ and indeed for ‘holidays.’ The 2014 Care Act consolidated - but also reformed - the law and aimed to encourage a greater diversity of approach, which in turn should promote an easier agreement as to care planning, and perhaps enshrine in law and policy the need for some degree of individual autonomy or agency. As Clements (2019) has also argued, the 2014 Act was itself grounded in a new ‘outcomes rhetoric’ to avoid the law’s previous regime, which had centred quite narrowly upon the list-tied question of which precise services might be provided to best meet needs, post-assessment of eligibility.\(^\text{27}\) The Court in *Suffolk* noted Clements’ pithy comparison of the attitudes of some Council decision-makers with the likely responses of the Poor Law Commissioners in times long past: the key message to be taken from the 2015 Guidance, was therefore it seems, that

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\ldots \text{Where the local authority provides or arranges for care and support, the type of support may itself take many forms. \ldots approaches to meeting needs should}
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\(^{24}\) ibid. at 110.

\(^{25}\) ibid. at 112.

\(^{26}\) See further para 11.41, of the 2015 Guidance: ‘This may be, for example, a course of relaxation classes, training on stress management, gym or leisure centre membership, adult learning, development of new work skills or refreshing existing skills (so they might be able to stay in paid employment alongside caring or take up return to paid work), pursuit of hobbies such as the purchase of a garden shed, or purchase of a laptop so they can stay in touch with family and friends.’

\(^{27}\) It is noteworthy too that things such as ‘adaptations’, ‘equipment’, ‘travel’ and ‘holidays’ (despite being included within The Chronically Sick and Disabled Persons Act 1970) were seen - somewhat contentiously - as having been left out by the scrutinising Committee tasked with considering the draft Care and Support Bill: the ministerial intent was apparently consolidatory here, not exclusionary.
be inclusive of less intensive or service-focused options.’ (Clements, 2019, para 8.90)  

In sum, if the professional view was that the Claimants’ assessed needs (arising from their disabilities) could be met through ‘a holiday or other recreational activities, then the cost of the holiday to the disabled person is a need which can be met under CA 2014.’  

For the Council to attempt to argue otherwise – for example, as here, that they lacked any power to somehow support the meeting of relevant, related, eligible needs - suggests a quite disingenuous disregard for Parliament’s legislative intentions, and an extremely limited grasp of the daily realities facing disabled persons and their carers. There is a dangerous assumption – often seen at the care planning stage - that carers (particularly family members) will be able and willing to continue providing care that is both adequate and appropriate: this conclusion is generally arrived at via an ‘avoidance of anything able to be called a proper conversation with a carer, let alone a carer’s assessment for their own needs, by reason of the support load they’ve taken on’ (Schwehr, 2019).  

This is especially relevant in an age of continuing austerity and abject uncertainty over the future funding of longer-term care needs, which has been further exacerbated by the Covid-19 pandemic. As the Joint Parliamentary Committee on Human Rights (Inquiry into the Protection of Human Rights in Care Settings) recently heard in oral testimony however (from the Chair of the Commission at Local Government and Social Care Ombudsman):

‘Our conclusion from looking at our investigations during the Covid period is that Covid did not create new problems; it underlined and focused on underlying stresses in the social care system. Many of the problems we saw during Covid were remarkably similar to the problems we saw prior to Covid. Even where you have these unusual circumstances during the pandemic, there has sometimes been a failure by local authorities and care providers that pre-existed before Covid to get the basics right and have robust resilient systems in place. This is at the heart of some of the problems we have seen’ (emphasis added) (King, 2022).  

As Clements (2019, para 8.90), points out also, the National Assistance Act 1948 was aimed at the abolition of workhouses and the rather ‘joyless oppressive Poor Law culture’ that still then predominated within the U.K. Likewise, the notion of having ‘packages’ of care (within the 1990 Community Care reforms) could be seen as not dissimilar to the concept of the ‘package holiday’ which was then gaining in popularity.  

‘Suffolk, above note i, at 121.  

Schwehr (2018), above note v, argues also that CP v NE Lincolnshire Council (2018) EWHC 220 (Admin), ‘a judicial review challenge against the provision offered to a 22-year-old woman with complex and multiple disabilities reiterates that an indicative allocation cannot be set on the assumption that informal carers’ ongoing willingness can be taken for granted.’  

M King (Response to Question 63): Oral evidence session: Protecting human rights in care settings, HC 714 (Joint Parliamentary Human Rights Committee) Wednesday 23 March 2022. The inquiry is tasked with looking ‘at human rights concerns in care settings in England, highlighting areas in which the human rights of patients, older people and others living with long-term disabilities, including learning disabilities and autism, are currently undermined or at risk… The inquiry will cover people living in residential care homes, hospitals and supported housing, as well as those receiving social care services in their own
It is worth noting especially perhaps that prior to the substantive hearing of *Suffolk* the High Court exercised its discretion to waive the 12-week time limit attached to bringing such judicial review claims. Mostyn J stressed that there were ‘…clearly arguable points of law which these seriously impaired claimants should be entitled as a matter of justice to place before the court.’\(^{32}\) The wider backdrop of austerity measures in general can be seen in cases such as *R (D) v Worcestershire CC*(2013),\(^{33}\) where a need for ‘considerable financial stringency’ on the part of the state was clearly highlighted, in spite of earlier calls within various policy documents (2003–2010) for claimants to find ‘innovative, creative and cost-effective arrangements to meet their own assessed needs.’ This case (albeit concerned with a community care funding cap) also saw the High Court consider the scope of those human rights outlined in Article 19 of the Convention on the Rights of Persons with Disabilities which (though non-binding) serves to remind states of their obligations to support ‘full inclusion and participation in the community’ so as to alleviate or prevent isolation or segregation. Though sympathy for those ‘with real needs’ was expressed by the Court here (with an acknowledgement that repeated welfare cuts were likely to reduce the quality of life of many disabled persons) it was still held that such harsh policies were *not* illegal, *per se*, given that various consultation processes had apparently been fully complied with. Unless these processes are operated rigidly as a fetter, they will, it seems, continue to be deemed legal. Harsh, unwritten policies implicitly disregarding principles of human dignity and equitable or equal treatment – not to mention the need for family ties, social inclusion, and human contact – do contravene the aims of the so-called ‘safety net’ statutory frameworks (such as the 2015 Regulations). These have, in theory at least, sought to underscore the importance of ‘Developing or Maintaining Family or other Personal Relationships’ within the Guidance.

There is clearly still an onus upon local authorities to address or prevent loneliness and social exclusion. In terms of violating human rights principles and provisions, various NGOs within the UK have also reiterated the seriousness of the challenges facing many carers, particularly given the ‘additional financial burdens that families with a disabled member… may face.’\(^ {34}\) Likewise, there are lingering issues surrounding rates of benefits uptake amongst carers, which are likely to be compounded by certain wider media discourses which often label some disabled persons as somehow undeserving of support. A further issue seems to be the question of whether carers’ benefits/packages of support can adequately compensate carers ‘for the cost of caring in all circumstances.’\(^ {35}\) This may be the question that local authority decision-makers should most concern themselves with when gauging whether sharp cuts to existing

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\(^{32}\) ibid. at 4.

\(^{33}\) *R (D) v Worcestershire CC* [2013] EWHC 2490.

\(^{34}\) See for example Northern Ireland Human Rights Commission ‘*NIHRC consultation response to Department of Health’s Regional Policy on the use of Restrictive Practices in Health and Social Care Settings*’ (2021) [https://nihrc.org/publication/detail/nihrc-consultation-response-to-department-of-healths-regional-policy-on-the-use-of-restrictive-practices-in-health-and-social-care-settings](https://nihrc.org/publication/detail/nihrc-consultation-response-to-department-of-healths-regional-policy-on-the-use-of-restrictive-practices-in-health-and-social-care-settings) (last visited 25th March 2022).

\(^{35}\) ibid.
support packages offer the best means of protecting or promoting the rights of those who are most vulnerable in the longer term. The repeated stigmatisation of those who must seek external support in an attempt to retain or regain their dignity - or access some quality of life for themselves or their relatives - does not sit well with the notion of a rights-protective, inclusive society, grounded in principles of equality and equitable distribution of resources. An appeal against the decision in *Suffolk* could well see the Court adopt the approach taken in such ‘scarcity of resource’ cases as *McDonald v United Kingdom* (2014). Though that case predated the 2014 reforms it still, arguably, shares a number of similar issues with *Suffolk*, namely, in relation to the need for human dignity and the duty upon states to protect/promote Article 8 ECHR rights within the discharge of their assessment and care planning functions. The Strasbourg Court noted in *McDonald* that some of the interferences with the claimant’s Convention rights (such as giving her no option but to start using incontinence pads during the night in the absence of a night-time carer) were both lawful and proportionate given the circumstances. The local authority’s actions were found to have been carried out in the pursuit of a legitimate aim, namely the protection of ‘the economic well-being of the state and the interests of other care users.’ As such, assessments of individual needs seem set to be increasingly framed against a wider, worrying backdrop of growing public/communal necessity: Care Act functions are perhaps not so much about viewing the needs of vulnerable individuals as being the responsibility of the State (and setting them against a standard fit for a civilised society) as they are about offering visible ‘assessment of priorities in the context of the allocation of limited state resources.’

**Conclusions**

*Suffolk* would not be quite as noteworthy if it were NHS legislation that was being placed under such scrutiny: the 2014 Care Act - and indeed much of the legislation that came before it - incorporated enforceable individual statutory duties, although this fact has often been lost sight of. The number of judicial reviews being brought forward in connection with the 2014 Act has waned somewhat in recent years: *Suffolk* is perhaps best viewed then as a useful reminder that an ‘error of law’ contention can often be much more powerful and effective than one which is grounded in the issue of rationality, or indeed perhaps, human rights claims.

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36 As Whitehouse (2020) recently predicted, ‘The reality of the situation is that adults with care needs may see a reduction or even complete removal of the care they have been receiving so far.’ ([https://www.bihr.org.uk/blog/hr-health-social-care-from-covid-19-and-beyond](https://www.bihr.org.uk/blog/hr-health-social-care-from-covid-19-and-beyond) last visited 22nd March 2022).

37 *McDonald v United Kingdom* (2014) 4241/12; ([https://hudoc.echr.coe.int/eng](https://hudoc.echr.coe.int/eng)) (last visited 28th March 2022). In respect of her earlier care, the court did however find a violation of Article 8 ECHR, awarding only pecuniary damages, however.

38 Ibid., at 53.

39 Ibid. at 55.
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