

Complete list of questions/answers used in this learning object

social care
institute for excellence



Social work practice

1. A social worker's ultimate accountability is to ...?	a	Their employer
	b	Their code of conduct
	c	Their professional association or trade union
	d	Her or himself
Correct answer: b		
<p>Social workers must be registered with a care council in order to practise, a process initiated by the <i>Care Standards Act 2000</i>. Upon registration social workers are committed to upholding the code of conduct and can be struck off the register if they are found to have breached it. The title "social worker" is protected. Professional associations and trade unions may have advice and representation services and may have codes of ethics to which members subscribe but social workers do not have to belong to either. Employers cannot require social workers to act unlawfully or in contravention of the knowledge, values and skills that are required for the post held.</p>		

2. The Data Protection Act 1998:	a	Allows service users access to all data held on them
	b	Allows services users to demand immediate access to data
	c	Allows service users access to data on them that the local authority decides does not fall within the exclusion criteria
	d	Allows service users to remove data from files

Correct answer: c

The person who is subject of the data has rights of access to the information that is held about them, subject to exemptions. Exemptions include: data held for the prevention or detection of crime; data held for the purposes of social work, where disclosure to the data subject is likely to prejudice the carrying out of social work, by causing serious harm to the physical or mental health of the subject, or another person; disclosure of information about physical or mental health without first consulting an appropriate health professional; where other enactments prevent disclosure (e.g. adoption). Detailed guidance is available under *LASSL (2000)*².

The Data Protection Act 1998 originally covered access to personal data held in health, education and social services records. *The Freedom of Information Act* extends the rights of access to all data held by public authorities.

3. The findings of complaints procedures:	a	Are binding on local authorities
	b	Are advisory to local authorities
	c	Set standards for future practice
	d	Should only be departed from with good reason by the local authority

Correct answer: d

Cases such as *R v North Yorkshire County Council, ex parte Hargreaves* [1997] 1 CCLR 104 have established that local authorities must pay due regard to the findings of complaints procedures. The findings may be departed from but only with good reason, clearly set out. The same is also true of recommendations by the Local Commissioner for Administration (Ombudsman). All these processes may identify standards for good practice but in essence they are designed to enable an investigation of how authority has been used in an individual case and to provide a form of redress in an individual case.

4. Which of the following does not require local authorities to establish advocacy services:	a	<i>Adoption and Children Act 2002</i>
	b	<i>Mental Capacity Act 2005</i>
	c	<i>Disabled Persons Act 1986</i>
	d	<i>Valuing People</i>
Correct answer: c		
<p>Various sections of the <i>Disabled Persons Act 1986</i> create a role for an authorised representative to refer an individual for an assessment and to support an individual in their negotiations with a local authority. These sections have not been implemented. <i>The Adoption and Children Act 2002</i> has amended Section 26 of the <i>Children Act 1989</i> to place a duty on local authorities to make arrangements for assistance to looked after children and young people leaving care who make or intend to make complaints. <i>The Mental Capacity Act</i> has also created an independent mental capacity advocate service, whilst <i>Valuing People</i> requires each local authority to make available advocates for learning disabled people.</p>		

5. Equality strategies are required in relation to:	a	Race
	b	Gender
	c	Disability
	d	All three
Correct answer: b		
<p><i>The Race Relations (Amendment) Act 2000</i> and the <i>Disability Discrimination Act 2005</i> require public bodies to counteract discrimination and promote equality of opportunity, requiring, amongst other initiatives, that public bodies have equality strategies in respect of staffing and service provision. <i>The Equalities Act 2006</i> adds a requirement for gender equality.</p>		

6. Partnership with parents is required by and defined in:	a	<i>GSCC Code of Conduct</i>
	b	<i>Framework for the Assessment of Children in Need and Their Families (Department of Health, Department for Education and Employment, Home Office, 2000)</i>
	c	<i>The Children Act 1989</i>
	d	<i>Working Together to Safeguard Children (Department of Health, Home Office, Department for Education and Employment, 2006)</i>
Correct answer: d		
<p>15 principles of partnership may be found in <i>Working Together</i>, which is policy guidance and therefore to be followed by those to whom it is addressed. <i>The Children Act 1989</i> does not refer explicitly to partnership with parents although it can be inferred from the welfare checklist, for example. Partnership would also be regarded as a key social work value, and therefore to be upheld by those registered with a care council or undertaking assessments of young people and their families.</p>		

7. When is a local authority not liable for the actions of its employed social workers?	a	When a social worker is acting as an 'ASW'
	b	When a social worker is approving prospective adopters
	c	When a social worker is acting as an 'appropriate adult'
	d	When a social worker is giving evidence in court
Correct answer: a		
<p>Approved social workers are assigned legal functions as individual practitioners. They are designated, once approved in accordance with Section 145 of the <i>Mental Health Act 1983</i>, with the necessary powers and duties to carry out certain functions under that Act. More usual is the placing of legal powers and duties upon the authority itself. This authority is then delegated to employees who must adhere to the legal rules and the local authority's guidance. Thus, approved social workers are not employees once designated. Social workers acting as appropriate adults and in other roles are performing functions delegated to them and the authority is vicariously liable for their actions.</p>		

8. When can a local authority not take resources into account?	a	When deciding on eligibility criteria and assessing need
	b	When deciding on what services to provide
	c	When responding to legal rules
	d	When deciding on the number of social workers to employ

Correct answer: c

When legal rules, such as Section 2, *Chronically Sick and Disabled Persons Act 1970*, list services for which local authorities must make arrangements, all such services must be offered where a need exists. When legal rules offer choice, such as policy guidance on choice of residential care (*LAC(92)27*), authorities cannot refuse on grounds of resources to provide accommodation chosen by an individual that they are already providing to others. When an authority has decided that services should be provided to meet an assessed need, this cannot be delayed because of lack of resources in a particular part of the authority. Budget allocations within an authority must be seen as indicative only, with money being transferred from one cost centre to another to meet demand. Equally, to be lawful, the intervention offered must have a reasonable chance of meeting the needs identified (*R v Birmingham CC, ex parte Killigrew [2000] 3 CCLR 109*).

9. In relation to individuals already receiving services the local authority:	a	May not change the care package
	b	May change the care package if the service user agrees
	c	May change the care package if the level of resources available requires it
	d	May change the care package following reassessment if need can be met in a different way

Correct answer: d

This requirement is laid out in policy guidance issued by the *Department of Health (1990) – Community Care in the Next Decade and Beyond*. Any care package, to be lawful, must have a reasonable chance of meeting the needs identified. Thus, resources may influence which care package is proposed only so long as what is offered will address the needs identified in a (re)assessment. Thus, residential care rather than domiciliary care could become the recommended provision following a reassessment.

10. When asked for information by the police, social workers must ...?	a	Never provide it
	b	Always provide it
	c	Provide it if it helps prevent or detect crime
	d	Provide it if it seems reasonable to do so
Correct answer: c		
<p>There is a general duty in common law to safeguard the confidentiality of personal information and the general principle is that information should not be disclosed without consent. However, guidance for Social Services Departments on confidentiality under the <i>Data Protection Act 1998</i> lists circumstances in which social services may disclose information without the consent of the subject. These include disclosure to staff involved in the case, and their managers; to another agency caring for a service user for the purpose of care; to other departments and agencies; to students and trainees; to police, courts, tribunals, statutory enquiries and others with power to require disclosure</p> <p>Disclosure of information without consent could give rise to a complaint that it breaches Article 8 of the <i>European Convention on Human Rights</i>. However, the right to respect for private and family life, home and correspondence, may be qualified when necessary in the interests of public safety, prevention of disorder and crime, or protection of health or morals, or protection of the rights and freedoms of others. In these circumstances, disclosure should be proportionate i.e. only to the extent necessary to achieve the legitimate purpose.</p>		

11. <i>The Public Interest Disclosure Act 1998 ...?</i>	a	Allows employees to talk to the press if they become concerned about standards of practice in their workplace
	b	Allows employees to share information on malpractice outside their organisation if they conclude it is not possible to discuss their concerns in their workplace
	c	Requires employees to contact the regulatory Care Council
	d	Requires employees to discuss their concerns with their line managers

Correct answer: b

The Public Interest Disclosure Act 1998 protects employees from victimisation (such as dismissal) when they have disclosed information about actions of others within their workplace which they believe to be a criminal offence, failure to comply with legal obligation, miscarriage of justice, danger to the health and safety of individuals or damage to the environment. To be protected, disclosure would normally be made internally through the employer's whistle-blowing procedure, but in certain circumstances external disclosure 'to an appropriate body' would also be protected, if the individual believed their concern would not be properly dealt with internally or they would suffer detriment. There is no requirement to contact the regulatory Care Council, although this could be an appropriate body to which an employee could make a disclosure.

12. In child protection investigations, the local authority owes a duty of care to:	a	The child
	b	The parents
	c	Both the child and the parents
	d	The child's siblings

Correct answer: a

This has been established by the House of Lords in *Re JD (2005)*. By a majority decision they ruled that a duty of care was owed to the child. Social workers, however, are used to negotiating multiple accountabilities. Providing that practitioners and managers are clear that the welfare of the child is paramount, owing a duty of care to others for how child protection cases are handled should not prove difficult.

Legal systems

1. The primary source of law is ...?	a	Legislation/statute
	b	Codes of practice
	c	Regulations
	d	Judicial decisions
Correct answer: a		
The powers and duties, which social workers implement, are laid out initially in statutes such as the <i>Children Act 1989</i> or the <i>NHS and Community Care Act 1990</i> . These powers and duties are then elaborated through regulations, also known as <i>Statutory Instruments</i> , and through policy and practice guidance. Judges may be called upon to interpret the meaning and/or intention of the legal rules contained in statute.		

2. The highest court in the UK is ...?	a	The European Court of Human Rights
	b	The European Court of Justice
	c	The House of Lords
	d	The Court of Appeal
Correct answer: c		
The House of Lords is the highest court in the United Kingdom. Once parties have exhausted all legal avenues in the United Kingdom it is possible to take a case to either the European Court of Human Rights or the European Court of Justice. This choice will depend on the nature of the case and the legal issues at the centre of it.		

3. In criminal law trials:	a	The prosecution must prove their case on the balance of probability
	b	The prosecution must prove their case beyond all reasonable doubt
	c	The defence must refute the case on the balance of probability
	d	The defence must refute the case beyond reasonable doubt

Correct answer: b

The onus is on the prosecution to prove beyond all reasonable doubt what they are alleging. The balance of probability is the standard of proof required in civil cases such as care proceedings. Instances, such as in the *Mental Health Act 1983*, where the onus has been placed on the defendant to prove their interpretation of events or circumstances, have been successfully challenged using the *Human Rights Act 1998* as incompatible with the *European Convention on Human Rights*. This has resulted in the law being changed.

4. The Human Rights Act 1998:	a	Integrates UN Conventions into UK law
	b	Provides social and economic rights for UK citizens
	c	Incorporates European Community Regulations into UK law
	d	Provides civil and political rights for UK citizens

Correct answer: d

The European Convention on Human Rights, integrated into United Kingdom law by the *Human Rights Act 1998*, contains civil and political rights. *The European Convention* does not contain provisions that would, for example, guarantee a right to housing or welfare support, which social workers might regard as particularly important for service users. Nonetheless, it is possible to discern how courts have used Convention rights to support key themes within the government's modernisation of social care, such as quality of practice, responsiveness and meeting needs, standards and accountability.

5. Which of these is not required by the <i>Human Rights Act 1998</i> ?	a	Positive promotion of the <i>European Convention on Human Rights</i>
	b	A proportional response when limited rights under the Convention
	c	Interpretation of Convention rights according to the time and social trends
	d	Prioritisation of Convention rights above duties in primary legislation

Correct answer: d

Where there is a potential conflict between the *Human Rights Act 1998* and another statute, practitioners must adhere to that other statute. If, when challenged, a court finds that there is indeed a conflict between the two pieces of legislation, it may declare part of a statute to be incompatible with Convention rights as incorporated into United Kingdom law by the *Human Rights Act 1998*. This is a clear signal to Parliament to rectify the incompatibility. Organisations performing a public function must positively promote Convention rights, which should not be interpreted in a static manner. When public organisations limit an individual's Convention rights, that action should be proportionate just sufficient in order to achieve the desired outcome.

6. The difference between policy guidance and practice guidance is ...?	a	An authority must follow both types of guidance
	b	An authority may follow both types of guidance if it believes this appropriate to the circumstances of the case
	c	An authority must follow policy guidance and should follow practice guidance unless there are good reasons not to
	d	An authority must follow practice guidance and should follow policy guidance unless there are good reasons not to

Correct answer: c

The Local Authority Social Services Act 1970 includes a provision requiring social services organisations to act under the guidance of the relevant Secretary of State. This is policy guidance. Practice guidance, however, does not have regulatory standing but must only be departed from with good reason since it acts as a code of good practice (*R v Islington LBC, ex parte Rixon [1996] The Times, 17 April*).

7. Which of the following is not policy guidance:	a	<i>Mental Health Act Code of Practice (Department of Health, 1999)</i>
	b	<i>Working Together to Safeguard Children (Department of Health, Home Office, Department for Education and Employment, 1999)</i>
	c	<i>Community Care in the Next Decade and Beyond (Department of Health, 1990)</i>
	d	<i>Framework for the Assessment of Children in Need and Their Families (Department of Health, Department for Education and Employment, Home Office, 2000)</i>

Correct answer: a

The Code of Practice is issued as practice guidance as opposed to policy guidance. Policy guidance is guidance issued under s.7 of the *Local Authority Social Services Act 1970*, which states that the local authority 'shall in the exercise of their social services functions, including the exercise of any discretion... act under the general guidance of the Secretary of State'. Such policy guidance should be followed, and deviation from it without good reason would be a breach of law. The local authority can neither ignore one aspect of it, nor over-emphasise one aspect at the expense of the overall picture. Practice guidance is not issued under Section 7, but it must still be considered, and departed from only with good reason.

8. A person wishing to challenge a local authority by requesting Judicial Review must normally first:	a	Apply to the Local Government Ombudsman
	b	Exhaust the local authority Complaints Procedure
	c	Apply to the Social Care Tribunal
	d	Ask the social worker for a formal review and reassessment of care package

Correct answer: b

One relevant case here is *R (Cowl) v Plymouth CC [2002] 5 CCLR 42*. Courts perceive complaints procedures to be more informal, potentially offering speedier resolution without unduly exacerbating differences between service users and agencies. Application to the Ombudsman is an alternative once service users have exhausted the local authority's complaints procedure. It is always open to a service user to request a reassessment or to apply to a care council for a review of a social worker's registration where they might have breached the code of conduct.

9. The doctrine of necessity in relation to adults:	a	Allows a social worker to act in the short term to safeguard anyone who is vulnerable
	b	Allows a social worker to act in the short term to safeguard anyone without capacity who is vulnerable
	c	Requires a social worker to protect a vulnerable person
	d	Allows a court to act in the short term to safeguard anyone without capacity who is vulnerable
<p>Correct answer: b</p> <p>The local authority may provide care and if necessary, restraints in the best interests of an adult who lacks capacity to decide such matters in order to protect their safety and welfare. For example, approved social workers have occasionally refused to inform a nearest relative of the whereabouts of a service user. The doctrine is outlined in <i>Re F (Adult Patient) [2002] 3 CCLR 210</i>.</p>		

10. Inherent jurisdiction' allows:	a	A court to order a local authority to provide a service
	b	A local authority to act in the best interests of a vulnerable person without capacity
	c	A psychiatrist to act in the best interests of a vulnerable person without capacity
	d	A court to order what is in the best interests of a vulnerable person without capacity
<p>Correct answer: d</p> <p>One leading case here is <i>Re F (Adult Patient) [2002] 3 CCLR 210</i>. Inherent jurisdiction is available to determine best interests when there is a dispute about the welfare of a person without capacity. This may cover where they should live, restraint, detention for short periods, and access to them. The court will draw up a balance sheet of factors to decide which course of action is in the adult's best interests (<i>Newham LBC v BS and S [2004] 7 CCLR 132</i>).</p>		

11. To release a patient from detention in hospital, a Mental Health Review Tribunal must be satisfied:	a	That the original admission was unlawful
	b	That the person has an appropriate place to live
	c	That the grounds for compulsory admission no longer exist
	d	That the person's mental disorder has responded to treatment

Correct answer: c

The task of the Tribunal is to consider whether the original grounds for compulsory detention still apply, based on professionals' reports, expert evidence (including a medical examination) and representation from the patient and/or their nearest relative. Discharge can be ordered even if original grounds for detention still apply and must be ordered if mental disorder is no longer evidenced (*Johnson v UK* [1997]).

The Tribunal provides the necessary mechanism for challenging the potential interference with article 5 ECHR rights that takes place when someone is compulsorily detained. The burden of proof is on the hospital authority, who must prove that the grounds for compulsory detention still apply, rather than on the patient to prove they do not. However, breaches of Article 5 have been declared, for example through delay in holding hearings and through the subsequent immediate re-detention of a released patient.

12. Adult asylum seekers can have their eligibility for services assessed by the local authority if:	a	They need care and attention because they are destitute
	b	They need care and attention because they are disabled
	c	They need care and attention because their claim for asylum has failed
	d	They are accompanied by children

Correct answer: b

The key interface here is between the *National Assistance Act 1948* and the *Immigration and Asylum Act 1999*. The latter excludes people subject to immigration control from the provision of Section 21 and Section 29 services under the *1948 Act*. However, the Court of Appeal has interpreted this interface to establish that anyone whose need for care and attention is made more acute by a circumstance other than the mere lack of accommodation and funds is owed a Section 21 duty (*R(O) v Wandsworth LBC* [2000] 3 CCLR 237).

Child care

1. Parental responsibility means ...?	a	Parental rights
	b	Parenthood
	c	Duties and responsibilities in respect of a child and her/his property
	d	Control over all decisions relating to a child's health, education and welfare

Correct answer: c

This is defined in Section 3(1) of the *Children Act 1989*. It increasingly gives way to a young person's right to make their own decisions when they acquire sufficient understanding (*Gillick v West Norfolk and Wisbech Health Authority [1986] AC 112*) Duties include the duty to maintain, to support, to ensure that the child is educated, to choose a name and to provide discipline. There are also rights and responsibilities relating to physical possession, contact, choice of religion, consent to medical treatment, consent to the young person's marriage, consent to adoption and administration of the child's property. Where these may be inferred as rights as well as responsibilities, they are not absolute. They may be limited by the age and understanding of the young person and the circumstances of the case.

2. <i>The Children Act 2004</i> created the role of ...?	a	A children's commissioner for England
	b	A director general for children in England
	c	An attorney general for children in England
	d	A children's governor for England

Correct answer: a

The Children Act 2004 creates the position of Children's Commissioner and outlines the role and responsibilities. The Commissioner cannot normally look into individual cases. Rather s/he has the power to look at how organisations listen to young people, to provide a route for complaints, to highlight failures and to make recommendations.

3. <i>The Children Act 1989</i> defines a child in need as ...?	a	A child beyond parental control
	b	A child with English as a second language
	c	A child excluded from school
	d	A child whose health and development is or is likely to be impaired without provision of services
Correct answer: d		
<p>Section 17(10), <i>Children Act 1989</i> defines a child as 'in need' if their health or development is not achieving a reasonable standard, or is being impaired or is likely to be impaired without provision of services, or they are disabled. Development encompasses physical or mental health and physical, intellectual, emotional, social or behavioural development (s.17(11)). The duties and powers in respect of such children and their families may be found in Sections 17 and 18 of the Act and in schedule 2.</p>		

4. For children in need the local authority must provide services ...?	a	Only as far as possible within financial constraints
	b	Only as a last resort in line with the 'no order' principle
	c	To promote their upbringing by their family so far as this is consistent with their welfare
	d	Only with parents' agreement
Correct answer: c		
<p>This duty may be found in Section 17(1) <i>Children Act 1989</i>. The services that may be provided can be found in Sections 17 and 18 and in schedule 2. Section 20, the provision of accommodation, may also become relevant if Section 17 provision is insufficient to safeguard and promote the child's welfare. How Section 17 powers and duties should be implemented is elaborated further in policy guidance, especially volumes 2 (family support, day care and educational provision), 3 (family placements) and 4 (residential care) of the <i>Department of Health Regulations and Guidance (1991)</i>. Section 116, Adoption and Children Act 2002 broadens the scope of s.17 to include the power to provide accommodation. In undertaking s.17 duties social workers must now also ascertain the wishes and feelings of children and young people (Children Act 2004).</p>		

5. A child has special educational needs if ...?	a	They fail school assessment tests
	b	The teachers conclude that they do
	c	They are disabled under the definition in s.17 of the <i>Children Act 1989</i>
	d	They have any kind of learning difficulty significantly greater than that experienced by most similarly aged children

Correct answer: d

This is a specific definition contained in the *Education Act 1996*. The local education authority must identify and assess all children with special educational needs, make a statement of these needs and arrange provision to meet them. Parents should be fully involved in this process. Under the *Disabled Persons Act 1986*, Sections 5 and 6, social workers may be required by local education authorities to become involved with children with special education needs, particularly as they approach the transition to adulthood or if they require to be accommodated under Section 22 of the *Children Act 1989*.

6. <i>The Children (Leaving Care) Act 2000</i> enhances the local authority's responsibility towards ...?	a	All young people over the age of 18 with whom they have had prior contact
	b	Disabled young people who have received respite care
	c	Young people who have been looked after by the local authority for longer than 13 weeks since the age of 14
	d	Homeless young people over the age of 16

Correct answer: c

This is one example where regulations, or statutory instruments, have been made that elaborate the basic powers and duties identified in statute. The group for whom local authorities must provide enhanced support under the 2000 Act is defined quite specifically and narrowly by regulations and excludes disabled children who have received respite care. The enhanced duties include a needs assessment, the appointment of personal advisers, and the preparation of a pathway plan. Maintenance, accommodation and support must be provided until the young person is 21. This can be extended to 24 when the young person is in education, training or employment.

7. The age at which children can be prosecuted in England and Wales is ...?	a	Eight
	b	Seven
	c	10
	d	14
Correct answer: c		
<p>Section 34, <i>Crime and Disorder Act 1998</i> abolished doli incapax. Accordingly, children aged 10 are held to be just as responsible and culpable for their offending as young people aged 16. There are wide variations on the age of criminal responsibility for young people amongst European states, from seven to 18. <i>United Nations Convention on the Rights of the Child</i>, to which the United Kingdom government is a signatory, recommends raising the age of criminal responsibility.</p>		

8. Police reprimands and warnings under the <i>Children Act 1989</i> are used ...?	a	When young people are outdoors after nine pm.
	b	When young people are truanting from school
	c	When young people might otherwise be subject to anti-social behaviour orders
	d	When young people admit an offence and could be deterred from committing others
Correct answer: d		
<p>The relevant provision may be found in the <i>Crime and Disorder Act 1998</i>, Sections 65 and 66.</p>		

9. <i>The Adoption and Children Act 2002</i> did not:	a	Allow same gender couples to adopt
	b	Allow step parents to acquire parental responsibility
	c	Enable independent reviewing officers to refer cases to CAFCASS
	d	Enable unmarried birth fathers to acquire parental responsibility on the same terms as married fathers

Correct answer: d

A distinction continues to be made between married and unmarried birth fathers. An unmarried birth father with parental responsibility can still have that responsibility removed by a court in circumstances other than adoption, which remains the only way in which a married birth father can lose parental responsibility. It is arguable therefore that the law continues to elevate marriage above other family forms. *The Adoption and Children Act 2002* did change the legal rules on adoption to enable same gender couples to adopt, to allow step parents to acquire parental responsibility by court order or by agreement with birth parents, and did create a route back to court through CAFCASS so that a local authority may be challenged for failing to implement a care plan agreed as part of care proceedings.

10. In care proceedings, to establish significant harm the local authority must:	a	Demonstrate it was happening when the child was first referred to their service
	b	Demonstrate it was happening when a child protection plan was agreed
	c	Demonstrate it is happening when the court finally hears the evidence
	d	Any of these

Correct answer: b

The leading case on this point is *Re M (A Minor) (Care Order: Threshold Conditions)* [1994] 2 FLR 577, decided by the House of Lords. However, evidence gathering continues and new evidence may be presented to show what the situation was when the protection plan was first initiated.

11. The welfare checklist does not apply when the court is considering whether to make:	a	A Section 8 order
	b	A care order
	c	A secure accommodation order
	d	A parental responsibility order
Correct answer: c		
<p>The welfare checklist does not apply to Part 3 of the <i>Children Act 1989</i>, which in Section 25 contains the provision that courts may make secure accommodation orders. This is because the child's welfare may be one factor but this may be outweighed by other factors that the local authority needs to take into account, including the rights of others (<i>Re M (Secure Accommodation Order) [1995] 1 FLR 418</i>).</p>		

12. In youth justice the welfare of the child is:	a	Not a consideration
	b	The paramount consideration throughout
	c	One consideration
	d	Only considered if detention is a possible sentence
Correct answer: c		
<p>Section 44, <i>Children and Young Persons Act 1933</i> contains the welfare principle. This, however, has been diluted by the <i>Crime and Disorder Act 1998</i> and the <i>Youth Justice and Criminal Evidence Act 1999</i>. Their emphasis is on intervention, prevention and restorative justice, centred on responsibility, rehabilitation and reparation. Increasingly there are parallel systems – one for children in need and their families and one for young offenders.</p>		

Adult services

1. Section 47(1) (A) of the <i>NHS and Community Care Act 1990</i> requires local authorities to:	a	Assess everyone who asks for assessment
	b	Assess everyone who appears to them to be in need of a service which they may provide or arrange
	c	Assess everyone who is referred by a doctor or other professional
	d	Screen all applicants in order to decide whether to assess them

Correct answer: b

Section 47(1), NHS and Community Care Act 1990 states:

'... where it appears to a local authority that any person for whom they may provide or arrange for the provision of community care services may be in need of any such services, the authority – shall carry out an assessment of his needs for those services; and

(b) 'having regard to the results of that assessment, shall decide whether his need calls for the provision by them of any such services'.

2. Under s.4, <i>Disabled Persons (Services, Consultation and Representation) Act 1986</i> , disabled people are:	a	Entitled to a service
	b	Entitled to practical assistance in the home
	c	Entitled to an assessment
	d	Entitled to a holiday

Correct answer: c

Section 4, Disabled Persons (Services, Consultation and Representation) Act 1986 states:

'When requested to do so by a disabled person or any person who provides care for him, a local authority shall decide whether the needs of the disabled person call for the provision... of any services in accordance with Section 2(1) of the *Chronically Sick and Disabled Persons Act 1970*'.

3. For the purposes of community care assessment, a person is disabled if:	a	They say they are
	b	They meet the definition in the <i>Disability Discrimination Act 1995</i>
	c	They meet the definition in the <i>National Assistance Act 1948</i>
	d	A general practitioner provides a certificate
Correct answer: c		
<p>The definition is contained within <i>Section 29, National Assistance Act 1948</i>, which refers to ;</p> <p>'persons aged 18 and over, who are blind, deaf or dumb, or who suffer from mental disorder of any description, and other persons who are substantially and permanently handicapped by illness, injury or congenital deformity or such other disabilities as may be prescribed'.</p> <p>The wording has not been amended subsequently despite its inappropriateness for the twenty-first century. Reference to that definition may be found in the two mandates for assessment of disabled people for community care provision, namely the <i>NHS and Community Care Act 1990 (Section 47)</i> and the <i>Disabled Persons Act 198 (Section 4)</i>.</p>		

4. Local authorities have:	a	A power to provide residential accommodation
	b	A duty to provide residential accommodation
	c	A duty to assess the need for residential accommodation
	d	A duty to run residential homes for vulnerable people
Correct answer: b		
<p>Originally, <i>Section 21 of the National Assistance Act 1948</i> gave local authorities the power to provide residential accommodation. This was subsequently turned into a duty by policy guidance, <i>LAC(93)10</i>, which details the groups towards whom this duty applies. The duty arises once the need has been identified in an assessment and applies to older and/or disabled people who are in need of care and attention not otherwise available to them. Local authorities may delegate all their provision to the voluntary, independent and for profit/not for profit sectors. What is reasonable in terms of when the accommodation must be provided will depend on the circumstances of the case.</p>		

5. Which of the following is not part of the legal framework for service provision to older people:	a	<i>NHS and Community Care Act 1990</i>
	b	<i>s.45 Health Services and Public Health Act 1968</i>
	c	<i>s.2 Chronically Sick and Disabled Persons Act 1970</i>
	d	<i>s.21 and sch.8 National Health Services Act 1977</i>

Correct answer: a

The 1990 Act merely provides the legal framework for assessment (s.47) and identifies (s.46) those acts that comprise the community care service framework. These include, for older people, the 1968 and 1977 Acts referred to in the question. *The Chronically Sick and Disabled Persons Act 1970* also forms part of the service provision framework for older people who meet the definition of disability contained in s.29 *National Assistance Act 1948*.

6. In relation to carers, the local authority must:	a	Decide whether to inform carers that they can be assessed
	b	Decide whether a carer's assessment is necessary
	c	Assess a carer's needs whilst the person they are caring for is undergoing a community care assessment
	d	Assess a carer's needs even if the person they are caring for has refused a community care assessment

Correct answer: d

The Carers (Recognition and Services) Act 1995 gave carers entitlement to an assessment of their willingness and ability to continue to care, where the local authority was carrying out an assessment of the person they were caring for under s.47 *NHS & Community Care Act 1990*. This extended the previous position, whereby carers of disabled people had a right to have their ability and willingness to care taken into account when the disabled person was being assessed under s.4, *Disabled Persons (Services, Consultation and Representation) Act 1986*.

The Carers and Disabled Children Act 2000 amended carers' entitlement to assessment, extending it to situations in which the cared-for person has refused a community care assessment under the *NHS & Community Care Act*. *The Carers (Equal Opportunities) Act 2004* requires the local authority to inform the carer of their right to an assessment.

7. Which of the attached statements best describes the decision of the <i>House of Lords in R v Gloucestershire CC ex parte Barry?</i>	a	Local Authority resources were not to be taken into account when assessing need
	b	Resources were not to be taken into account when the local authority had exhausted them
	c	Resources may be taken into account when assessing needs and when deciding whether to meet needs
	d	Need is an absolute concept and qualitatively different from questions of resource
<p>Correct answer: c</p> <p>The House of Lords allowed Gloucestershire's appeal against the Appeal Court's prior ruling that the local authority was not entitled to take account of resources when assessing or reassessing needs and deciding whether it is necessary to make arrangements to meet needs. In particular, Lord Nicholls considered the local authority should have regard to cost when assessing need and that the criteria for establishing need can vary with the availability of resources. Lord Clyde considered the local authority should have regard to resources in deciding whether it is necessary to make arrangements to meet needs.</p> <p>N.B This is the case of Michael, featured in Object 1.</p>		

8. In deciding whether to provide services following community care assessment, the local authority can disregard:	a	Needs expressed by the service user
	b	Future needs
	c	Psychological needs
	d	Needs that it is not necessary to meet
<p>Correct answer: d</p> <p><i>The NHS and Community Care Act 1990</i> requires local authorities to assess where it believes that an individual may require community care provision. The authority may determine what level of need it recognises as requiring assessment and service provision, using <i>Fair Access to Care policy guidance (2002)</i> and <i>Care Management and Assessment practice guidance (Department of Health 1991)</i> as the framework. Judicial decisions have clarified that need includes future needs and psychological needs whilst the 1991 practice guidance is clear that, whatever service users might express in terms of needs, the local authority has the ultimate decision-making role.</p>		

9. Which of the following is not an option for the protection of vulnerable adults:	a	Removal under s.47 <i>National Assistance Act 1948</i>
	b	Guardianship under s.7 <i>Mental Health Act 1983</i>
	c	Court order directing intervention to protect
	d	Statutory duty on the local authority to investigate and protect

Correct answer: d

There is no statute that provides a duty of investigation and protection of vulnerable adults. Policy guidance entitled '*No Secrets*' (*Department of Health, 2000*) provides a framework for responding to the suspected or alleged abuse of vulnerable adults. It requires an inter-agency policy and administrative framework, led by social services, and local strategies for responding to reports and providing services.

However, courts can use their inherent jurisdiction to direct an outcome, such as where a vulnerable adult must live, thus offering protection from abusive environments (*Re F (adult: court's jurisdiction) [2001]*) where a person lacks capacity to decide for themselves.

Section 47, *National Assistance Act 1948* provides for the compulsory removal from where they are living of a person who is; 'suffering from grave chronic disease or, being aged, infirm or physically incapacitated, is living in unsanitary conditions, and is unable to devote to themselves, and is not receiving from other persons, proper care and attention.'

Their removal must be necessary in their own interests or to prevent injury, or serious nuisance, to others.

Guardianship under s.7, *Mental Health Act*, is available for someone with mental illness, mental impairment, severe mental impairment or psychopathic disorder, which may be received into the guardianship of another individual, or the local authority in the interests of their welfare. The guardian can require:

- the patient to live in a specified place
- the patient to attend for the purpose of medical treatment, occupation education or training
- access to the patient to be given to any doctor, ASW or other person.

The Family Law Act 1996, covering violence in domestic settings and providing for non-molestation and occupation orders, may also be of assistance to some vulnerable adults.

10. Once carers have been assessed, the local authority has:	a	A duty to decide what services are necessary
	b	A duty to provide services that help the carer to care for the person they care for
	c	A power to provide services that help the carer to care for the person they care for
	d	A duty to provide direct payments to the carer

Correct answer: c

The Carers and Disabled Children Act 2000 gives local authorities the power to provide services to carers, following assessment under the *Carers (Recognition and Services Act 1995)*, in order to help the carer care for the person they are caring for. The Act also gives local authorities the power to make direct payments to carers, including those aged 16/17, to arrange for services they have been assessed as needing. Note, however, that both of these provisions are powers rather than duties.

11. Which of the following must be provided without financial charge to the service user:	a	Residential accommodation under s.21 <i>National Assistance Act 1948</i>
	b	Domiciliary services under s.2 <i>Chronically Sick and Disabled Persons Act 1970</i>
	c	Services to carers under the <i>Carers and Disabled Children Act 2000</i>
	d	Aftercare services under s.117, <i>Mental Health Act 1983</i>

Correct answer: d

To charge for services provided under Section 117 Mental Health Act 1983 is unlawful (*R (Stennett and Others) v Manchester CC [2002] 5 CCLR 500*). Local authorities must charge for residential care provision (*Section 22 National Assistance Act 1948 and Section 44, NHS and Community Care Act 1990*). *The Community Care (Residential Accommodation) Act 1998* lays out the basis of the charges regime that local authorities must follow. The upper and lower limits of an individual's resources that operate in respect of charging for residential care are varied annually. Section 55 *Health and Social Care Act 2001* allows for deferred payments. For domiciliary services charging is optional but strongly encouraged (*Section 17, Health and Social Services and Social Security Adjudications Act 1983*.) Charges must be reasonable and inability to pay should not mean withdrawal of provision. Under the *Community Care (Delayed Discharges etc) Act 2003*, local authorities are not allowed to charge for items of community equipment for clients or carers if the cost of buying and fitting them is less than £1000, or for services forming part of a package of intermediate care for the first six weeks.

12. For which of the following may direct payments not be used:	a	To purchase health care
	b	To purchase care from a relative
	c	To purchase care from a live-in carer
	d	To purchase residential care
Correct answer: a		
<p>Under the <i>Community Care (Direct Payments) Act 1996</i>, the local authority may provide cash payments to service users in relation to whom it has accepted that services should be provided to meet assessed need. Originally restricted to disabled people between 18 and 65, direct payments are now available to any adults (with the exception of some mentally disordered people), to carers for services to meet their own assessed needs, and to disabled children of 16/17. <i>The Community Care (Direct Payments) Amendment Regulations 2000</i>, identify permissions and exclusions in relation to the use of direct payments, which include the prohibition on purchasing health care. The <i>Community Care, Services for Carers and Children's Services (Direct Payments) Regulations and Guidance 2003</i> offer a full overview of current requirements, including a duty to provide direct payments where the conditions are met.</p>		

Mental health and capacity

1. Admission for assessment (<i>Mental Health Act 1983, Section 2</i>) lasts for a period not exceeding:	a	72 hours
	b	28 days
	c	6 months
	d	6 hours
Correct answer: b		
<p>The grounds for admission for assessment under s.2 are that the person has a mental disorder of a nature or degree warranting admission to hospital and that detention is in the best interests of their health or safety or with a view to protection of others. The application may be made by either an approved social worker or the patient's nearest relative, and must be supported by two medical recommendations.</p>		

2. In order to be admitted under s.2 Mental Health 1983, a person must be diagnosed as having:	a	A mental disorder
	b	A mental illness
	c	A mental impairment
	d	A severe mental impairment
Correct answer: a		
<p>Mental Disorder is defined in the Act as being: mental illness, arrested or incomplete development of mind, psychopathic disorder; any other disorder or disability of mind. This is a broad definition, encompassing a wide range of conditions, and is the qualification for a wide range of short-term compulsory admissions (under s.2, s.4, s.5, s.135, s.136).</p>		

3. Before compulsory admission for treatment under s.3, <i>Mental Health Act</i> , the patient must be seen by at least:	a	One consultant psychiatrist
	b	An approved social worker and the nearest relative
	c	An approved social worker and a doctor
	d	Two doctors and an approved social worker or nearest relative
Correct answer: d		
To be admitted under s.3, the patient must have one of the four specific forms of mental disorder or a nature or degree making treatment in hospital appropriate. Detention must be necessary for their health or safety or for the protection of others and detention must be the only way of giving treatment. If the diagnosis is mental impairment or psychopathy, the condition must be treatable. The application must be made by either an approved social worker or the nearest relative and be supported by recommendations from two doctors, all of whom must have seen the patient.		

4. Admission for assessment in cases of emergency (s.4 <i>Mental Health Act 1983</i>) may be made by:	a	A hospital manager
	b	A magistrate
	c	An approved social worker or nearest relative
	d	The police
Correct answer: c		
Where admission under s.2 is of urgent necessity, under s.4 it can take place on 1 medical recommendation, in which case detention is for 72 hours, extendable to 28 days by the provision of a second medical recommendation. The application must be made by either an approved social worker or the nearest relative.		

5. To be detained by the police under s.136 <i>Mental Health Act 1983</i> , a person must be:	a	In a public place
	b	In a place to which the public has access
	c	Being ill-treated or neglected
	d	Living alone and unable to care for her/himself
Correct answer: b		
<p>Section 136 authorises the police to remove to a place of safety for 72 hours a person who appears to be mentally disordered and in need of care and control and in a place to which the public has access.</p> <p>Where someone is not in a place to which the public has access, Section 135 provides for entry to premises where a mentally disordered persons is believed to be living, and being ill-treated or neglected or is living alone and unable to care for themselves. They can be removed to a place of safety for 72 hours.</p>		

6. To be detained under s.3 <i>Mental Health Act 1983</i> a person with learning disability must:	a	Be treatable
	b	Have a personality disorder
	c	Have one of four specific forms of mental disorder
	d	Have refused treatment
Correct answer: c		
<p>In addition to the broad definition of mental disorder referred to in question two above, the Act refers to four specific disorders - mental illness, psychopathic disorder, mental impairment and severe mental impairment – and gives definitions of all except mental illness. Mental impairment and severe mental impairment are more specific forms of ‘arrested or incomplete development of mind’, which are associated with varying degrees of impairment of intelligence and social functioning, and abnormally aggressive or seriously irresponsible conduct. Psychopathic disorder is ‘a persistent disorder or disability of mind (whether or not including significant impairment of intelligence) which results in abnormally aggressive or seriously irresponsible conduct’. For the longer term admissions to hospital, for example under s.3 for treatment, the diagnosis must be one of the four specific disorders.</p> <p>Thus, someone with a learning disability (which would fit under the general definition of ‘arrested or incomplete development of mind’) can be admitted under the short term provisions, but not under s.3 unless they also have one of the four specific forms of mental disorder.</p>		

7. Before making an application for compulsory admission, an ASW must:	a	Visit the patient
	b	Interview the patient
	c	Tell the patient that they are being admitted
	d	Get the nearest relative's consent in writing
Correct answer: b		
<p>Before making an application, the approved social worker must interview the patient 'in a suitable manner' and must satisfy her/himself that detention in hospital is, in all circumstances of the case, the most appropriate way of providing the care and medical treatment the patient needs (s.13(2)).</p> <p>For admission under s.2, the nearest relative must if possible, be informed but does not have to consent. For admission under s.3, the nearest relative must, if possible be consulted and the admission cannot take place if they object (although an unreasonable objection can be overruled by a court).</p>		

8. A person on guardianship under s.7 <i>Mental Health Act 1983</i> can be:	a	Required to take their medication
	b	Taken into hospital if they need treatment
	c	Conveyed anywhere at the guardian's request
	d	Required to live in a specified place
Correct answer: d		
<p>A person over 16, with one of the four specific disorders (mental illness, mental impairment, severe mental impairment, psychopathic disorder) may be received into the guardianship of another individual, or the local authority. The guardianship must be necessary in the interests of the welfare of the person concerned. An application may be made by an ASW or the nearest relative (the nearest relative must be consulted) and must agree to the local authority and be supported by two medical recommendations. The guardianship lasts for six months and is renewable. The powers of the guardian are;</p> <ul style="list-style-type: none"> • to require the patient to live in a specified place • to require the patient to attend for the purpose of medical treatment • occupation, education or training • to require access to the patient to be given to any doctor, ASW or other person. 		

9. People with a psychopathic disorder can be detained under the <i>Mental Health Act 1983</i> :	a	Only under sections allowing short detentions up to 28 days
	b	Under Section 3 allowing longer term detention for treatment if they are dangerous
	c	Under Section 3 allowing longer term detention for treatment if their condition is treatable
	d	Not at all, because psychopathy is a personality disorder and not a mental disorder
<p>Correct answer: c</p> <p>Psychopathic disorder both falls within the broad definition of mental disorder and is one of the four specific forms of disorder, thus short term detentions up to 28 days are permissible (s.2, s.4, s.5, s.135, s.136). However, to be detained for treatment under s.3, their condition must be deemed to be treatable.</p> <p>There is debate in medical circles about the status of people with severe personality disorder such as psychopathic disorder, which many consider not to be treatable. Despite this, proposals for legislative change include removal of the 'treatability' requirement.</p>		

10. Which of the following principles is not contained within the <i>Mental Capacity Act 2005</i> ?	a	The right to make eccentric or unwise decisions
	b	The right to support to make one's own decisions
	c	The right to make one's own decisions, unless incapacity is proven
	d	The right to make one's own decisions provided they are in one's best interests
<p>Correct answer: d</p> <p>There is no requirement for decisions made by someone with capacity to be in their best interests. The best interests test applies to decisions taken on behalf of people who lack capacity.</p>		

11. Advance decisions to refuse treatment made under the <i>Mental Capacity Act 2005</i> :	a	Must be respected provided they apply to the treatment or action being proposed
	b	Must be respected except in life threatening circumstances
	c	Must be respected provided they are signed and witnessed
	d	Must be respected provided the responsible medical officer considers they are in the person's best interest

Correct answer: a

Advance decisions not to receive treatment must be specific to the treatment in question. These wishes must be respected by those proposing treatment, who will not be liable for the consequences of withholding treatment. To be applicable in life-threatening circumstances, they must also be written, signed and witnessed, and contain the words 'even if life is at risk'.

12. <i>The European Court of Human Rights</i> judgement in the case of <i>HL v UK</i> means that people lacking capacity to consent to hospital admission or treatment:	a	Should always be detained formally under the <i>Mental Health Act 1983</i> if they meet the grounds for detention
	b	Should be detained formally if appropriate care can only be provided by depriving them of their liberty
	c	Can be admitted without formality provided they don't resist
	d	Should only be detained if the nearest relative consents

Correct answer: b

The case involved the informal admission under the common law doctrine of necessity (i.e. without going through the formal compulsory admission process) of someone who was deemed not to have capacity to consent to admission. 'Lawful detention of people of unsound mind' is one of the circumstances that allows deprivation of liberty without breach of Article 5 of the *European Convention on Human Rights*. But where it is intended to deprive someone of their liberty (that is, exercise complete and effective control over their care and movements), then there should be procedural safeguards in place to ensure the lawfulness of the detention. The UK government has accepted that where people lacking capacity are to be deprived of their liberty in their best interests under the common law doctrine of necessity, procedural safeguards are required. Until these are in place, if the care proposed would effectively deprive someone of their liberty, then they should be detained formally using existing powers for compulsory detention under the *Mental Health Act*.

