

Centre for Adults' Social Care – Advice, Information and Dispute Resolution



CASCAIDr

A proposed new charity, for upholding public law legal rights to health and social care

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Belinda Schwehr's new social care legal advice charity – why its time has come

I am applying to register a proposed new charity - to provide free legal advice to people stuck in wrangles over health and social care with their local council or health service Clinical Commissioning Group (CCG).

It's going to be called CASCAIDr -

The Centre for Adults' Social Care – Advice, Information and Dispute Resolution

What's the problem?

I believe there's an urgent need for a national organisation providing free legal advice on social care. Existing information and advice resources have been depleted, legal aid has shrunk and Citizens Advice Bureaux don't cover this area.

In addition, there's an acknowledged crisis in social care funding, a significantly reduced workforce and yawning gap between the rhetoric and the reality – with some ugly and unethical pressures being applied behind the scenes.

Most people don't even realise that they *have* a legal problem until it's too late. Others just don't want to rock the boat, through fear or simple resignation. In difficult times, many people feel that their relatives shouldn't be someone else's concern. In truth, none of us can predict whether it will be us who ends up needing adult social care. We all need public sector decision-making to be properly governed by the law and sound legal principle.

What will CASCAIDr do?

CASCAIDr's primary purpose is to provide free, specialist legal advice on adult health and social care rights. The recipients will be people who qualify as "in scope" in respect of disputes about eligibility for funding or the amount of funding for packages of services under statutory duties applicable in England and Wales.

CASCAIDr's objects also include advancing social welfare, public education, relieving financial hardship, promoting citizenship, conflict resolution and shoring up third-sector providers in difficult times. CASCAIDr's logo is a floodgate with a deluge of powerful cascading water carrying all before it.

If a council or NHS body near you is doing something that we ought to know about, please email the details to me at belindaschwehr@cascaidr.com. **We can't wait to open the floodgates!**

Our activities will include triage, steering, analysis, advice and the drafting of what's called a "pre-action protocol letter". This is a letter that people are obliged to send to local authority and CCG legal advisers if they believe they have a serious legal challenge to bring by way of judicial review, in the Administrative Court.

We won't play games for their own sake, of course – we're professionals! We will aim to promote compromise and cases being settled on suitable terms, but we are committed to helping people enforce their legal rights to decent care packages.

CASCAIDr will focus on a selection of fundamental issues in adult social care law – for example, the cost-capping of homecare, omission to implement advocacy rights, ignoring the Care Act guidance and lack of engagement with why a care plan is even arguably sufficient and defensible.

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How are we going to tackle this?

Our unique approach is to use crowdfunding to support legal challenges where a barrister has given a positive opinion on the merits of the case. Public bodies will not be able to ignore this – they will know we are serious. Our hope is to reinvigorate the rule of law within local government, before things get worse. A little legal principle should go a long way with public bodies' management, staff and elected or Board Members.

CASCAIDr will work in a virtual way, using technology to enable people to:

- ✓ book calls to an expert and fill out referral forms online
- ✓ obtain assistance from volunteers, if the person's own attempt at a form is not sufficiently specific.
- ✓ get advice directly from a public access barrister (for more complex cases that are beyond CASCAIDr's specialist in-house expertise)
- ✓ gain access to solicitors who either offer legal aid or are interested in working, perhaps "pro bono", on useful test cases
- ✓ raise money for litigation through crowdfunding, via the CrowdJustice website.

How will we cope with the workload?

As founder, I'm going to be bringing 20 years of expertise in adult social care law. I have been a barrister, academic, trainer, writer and commentator. I'm now happily returning to my roots as a legal thinker, with a mission to develop and preserve legal literacy in the sector.

I will provide the first level of triage for the organisation myself, at first. Interested volunteers will be available to help elicit salient facts from people who are struggling (having signed up, online, to undertake this role).

Advisers with skills and familiarity with the legislation will then analyse, advise and prepare draft letters, which will be checked before transmission to any public body. Aspiring advisers can apply online for this role, for which they will be paid a flat rate per task.

For more complex cases, we have identified leading barristers with direct public access rights, who are interested in working for a flat rate per hour (about the same as they would get on legal aid for a judicial review case).

CrowdJustice terms and conditions are highly supportive of CASCAIDr's ongoing financial viability, because any funds not used on the litigation end up with CASCAIDr. So if the body being challenged ultimately settles the case, it will have funded further challenges, through lack of attention or indecision, about conceding, earlier on.

Is this all going to be free?

Not quite! CASCAIDr will offer an affordable advice service to people outside the scope of the **free** legal advice.

So we'll provide discounted fee-based advice and support to individuals whose problems are not actually about assessment, eligibility or care planning and cuts, such as problems related to charging, safeguarding or some other aspect of health or social care. We will offer "hand holding" to people to support people before they *acquire* a legal problem and people who need help making a formal complaint. We will also offer discounted legal advice to any organisations in the sector that are not for profit, or charities themselves, such as care and support providers, or advocacy organisations.

We'll be offering chargeable training, too, in the form of webinars and lectures for universities, charities, providers and advocates. Our **specialist training topics** include:

The Care Act – reviewing practice and implementation to date	Safeguarding, DBS obligations and CQC registration issues
Personalisation and personal budgets	Rationing and eligibility for health and community care services
Direct Payments and the employment of PAs	Contracting and commissioning of care and housing support
Money Management for People with Impairments	Continuing NHS health care: obligations and commissioning
The Mental Capacity Act and DoLS (plus the new proposals)	Mental health legal developments

Where will all the money come from?

CASCAIDr will be seeking **donations** from organisations such as care providers and housing associations and, of course, from members of the public. All donations will attract GiftAid or be tax deductible for corporates, once we have obtained charitable status.

We are also offering **Fee Based Memberships** to organisations such as law firms who wish to develop health and social care public law expertise, advocates' organisations and social and healthcare providers. In return for their fee, member organisations will have access to my Care Act webinar series, a case law update twice a year, and three hours of advice per year. If an organisation cannot afford membership, it can offer help to CASCAIDr, instead – for example, access to volunteers, fundraising or simply spreading the word.

We hope providers will make donations, because they are damaged too by any public body's lack of respect for the end user's rights. If publicly funded service users and carers are given arbitrarily low packages, or budgets, then the businesses that are commissioned and paid to *provide* the inputs, all receive less than they need, too, and end up struggling.

We know that business wouldn't want to be seen to pay for legal advice for a service user as to how to challenge the public body making the decisions; but making a donation or paying for a membership is a wholly different thing, we think! I want "Collaborating with CASCAIDr, to uphold legal rights' to be a badge of pride, one day, for health and social care businesses!

Why action is needed now

If something is not done to help people, now, there is a risk that reduction in the money supply will make it impossible for advice organisations to justify funding the acquisition of health and social care legal expertise. It will become uncommercial for them to do so if they are not getting "customers" through their doors. The only effective way of holding the State to account on social care issues is through **legal** accountability - and that is alarmingly close to disappearing.

CASCAIDr's launch is likely to be sometime in March 2017, as it all depends on Charity Commission registration for maximising initial donations. People will be able to donate by text or by way of the MyDonate.Com site, which automates the addition of 25% GiftAid, if you are a taxpayer.

It would be great if people could like, follow or tweet about CASCAIDr on Facebook, Twitter and other platforms before and after the launch: #CASCAIDr and @BelindaSchwehr, for now....