Contents

Acknowledgements	xi
Introduction to the third edition	. xiii
Limitations	
References	
About the author	.xvii
Useful information	. xix
Chronology of Regulations made under Part 1 of the Care	
Act 2014	.xix
Table of cases	
Local government ombudsman complaints	xxix
Commissioners' decisions	xxix
Abbreviations	xxv
Chapter 1: Residential care provision by social service departments	1
The scope of residential care provision	
What is a care home?	
Sources of law	
The Care Act 2014 – overview	
Assessment, eligibility and care planning	
Local authorities	
Responsibility for NHS patients	
Statutory advocacy	
Duties and powers and to meet eligible needs.	
Who commissions residential care?	
Discretionary powers to provide residential care	

Exceptions	43
Exception for those subject to immigration control	
Choice – do I have to go into a care home?	
Paying for care and deprivations of liberty	
The care planning process.	
Personal budgets, choice of accommodation and top-ups	
Arrangements for payment of a top-up.	
After-care for former mental hospital patients	
Contracting with a care home	
Statutory responsibilities to self-funding residents facing eviction .	94
Chapter 2: Protecting the home	103
Care cost capping – its genesis and its demise	103
Care capping – what does the Act provide?	
Policy	
What is a deferred payment?	
The Care Act provisions	
Mandatory and discretionary deferred payments	
The amounts that can be deferred	
The equity limit	
Sustainability	
Adequate security	
Interest	
Repayment	
Administration costs	
Terms and conditions	
Looking after the property	
Information requirements	
Ongoing obligations	
The meaning of 'premises' (occupied as their main or only home)	
Premises that may be covered by the disregard	137
Chapter 3: Financial assessment	141
, Means testing comes after assessment	
Paying only what you can afford	
The obligation for the authority to carry out – and the adult to	
cooperate with – a financial assessment	146
The minimum income condition and its relation to the upper capito	
limit	
Short-term residents and temporary residents	
שווים בינים איז	

The status of the partner's resources	154
Creutzfeldt-Jakob disease	155
Chapter 4: The assessment of income	. 157
What is income?	157
Calculation of income	157
Treatment of earnings	157
Capital to be treated as income	
Tariff income	161
Disregarded income	162
	470
Chapter 5: The assessment of capital	
What is capital?	
The upper financial limit for capital	
Full paying residents who are close to the capital limit	
Chose in action	
Cheques.	
Money held by solicitors	188
Chapter 6: Capital disregards	. 189
Introduction	189
Disregards do not need to be claimed	189
The upper and lower capital limits	
The disregards relating to the resident's dwelling	
Moving house – sale, purchase, adaptation and gaining access	
The qualifying relative disregards	
Premises occupied by a partner or family	
Property disregards for permanent residents intending to resume	
independent living	212
The discretionary disregard of premises occupied by a third party	213
The resident's business interests	218
Life policies and investment bonds	229
The value of the right to receive any outstanding capital instalments.	230
The resident's future interest in any property	
Tenanted property and the value of future payments of rent	
Currency conversion costs	
Certain payments from certain approved trust funds	
Non-monetary charitable gifts	
Pensions	
Arrears of specified payments of benefits and tax credits	

Arrears payable to widows, widowers or surviving civil partners	238
Certain deposits with housing associations	238
Personal possessions	239
Static caravans, chalets, houseboats and beach huts	239
The right to receive an annuity and its surrender value	245
Funds derived from an award for personal injuries to the resident \dots	246
The capital value of the right to receive a stream of income	251
Social fund payments	252
Refunds of buy to let mortgage tax relief	252
Capital treated as income	252
Certain compensatory and other welfare receipts	253
Payments to former WWII prisoners of the Japanese	253
Compensation payments for sufferers of variant Creutzfeldt-Jakob	
disease and their relatives	254
Age-related payments	254
Other disregards	255
A note on funeral plan payments	255
Chapter 7: Income and capital available upon application	
What is income or capital available upon application?	
Contingent interests	
Benefits available upon application	
Third party payments	
Notional income and capital in private pensions	261
Chapter 8: Deprivation of income and capital	265
False statements	
Asset adjustment	
Sources of law	
Diminishing notional capital	
An analysis of Regulations 17(2) and 22(2)	
The statutory guidance	
Investigation and proof	
Deprivation must make a difference to the means assessment	
kasonableness	
The end of discretion	301
Enforcement	301
Use of existing capital to pay fees	
Can a deprivation be traced back through a number of transactions?	
Can notional capital be subject to a statutory disregard?	

Payment of debts	305
The rule on diminishing notional capital in deprivation cases	309
Deprivation as a result of the purchase of personal possessions \ldots .	312
Chapter 9: The valuation of assessable capital	
Introduction	
An easy way to save time and effort	
Capital is not assessed net of debt	
Current market value	
The current market value of land	321
Matters arising upon sale of land	331
Valuation of the former matrimonial home	335
Specific cases	338
Deductions from value	344
Capital held abroad	350
Third party interests in property	351
Chapter 10: Care fees avoidance – making gifts and creating trusts .	361
Introduction	361
Giving advice	363
The Law Society Practice Direction on Gifting 2017	364
The risks of transferring an asset	373
Alternatives	377
Severance of jointly held assets	381
Trusts	386
Absolute and discretionary trusts	390
Avoiding the pitfalls of outright gifts	391
Are they effective?	392
Can a local authority pressure trustees?	394
Trustee investment powers	396
Pressure on trustees to distribute capital	397
Sham trusts	398
Cases involving allegations of mental incapacity	399
Cases involving fraud and undue influence	400
The use of Inheritance (Provision for Family and Dependents) Act	
1975 (IPFDA)	401
A trust as a provider of 'top-up' care fees	402
Can a local authority enforce a care fees debt against trustees?	
Personal injury trusts	402

Chapter 11: NHS continuing care	405
The health and social care divide	406
Reorganisations	408
Caring for the future	414
Summary of the history	425
Developments after 1993	426
Health Service Guidance 95(8)	427
Coughlan v. North and East Devon Health Authority	431
Funded nursing care	439
HSC 2001/015: LAC (2001)18	443
The Wigan case	445
The Grogan case	445
The statutory test	448
The quantity test	449
The quality test	452
The impact of the Care Act 2014	455
The NHS Continuing Care Framework: How is it meant to work?	460
Application of the quantity and quality tests to advanced dementia	
patients	464
Who is entitled to an assessment?	466
Can a full assessment be delegated?	467
The checklist	467
Timescales	
NHSCHC assessment must pre-date an FNC assessment	
The multi-disciplinary team	469
Hospital discharge procedures	471
The Fast Track pathway	472
NHS continuing care case reviews	478
Remedies	482
Chapter 12: Remedies	
The current system and how we got here	
The 2009 Regulations	
The state of the NHS complaints procedure	
The complaints system in England and Article 6 of the Human Rights	
Act 1998	
The Care Act 2014	
The monitoring officer	
A complaint to the Secretary of State	
Making a complaint to the Local Government Ombudsman	514

	Complaints to the Parliamentary and Health Service Ombudsman	
	(PHSO)	521
	Judicial review	525
	First step – complaints procedure or judicial review pre-action protocol? .	. 527
	Second step – Ombudsmen or judicial review	530
	Reasons challenges	538
	Land registry disputes on registered charges	539
	Complaints against independent providers of residential care	540
	The duty of candour	541
	The NHS constitution	541
	Advocacy services	541
	A conclusion on access to effective remedies in England	543
Ch	apter 13: Methods of enforcement available to local authorities	
	Powers under the Care Act	547
	Recovery of resources from the recipients of gifts	551
	The Insolvency Act 1986 – recovery of gifts from the recipients and	
	trustees	555
	Transactions at an undervalue – Insolvency Act 1986, sections	
	339–342	556
	Transactions defrauding creditors – Part 16 of the Insolvency Act 1986	563
	General litigation risk	569
	Local authorities as debt collectors	569