

A Triptych of Social Care in Britain

Abstract

This paper develops a political and legal analysis of the structural failure of England's adult social care system under the Care Act 2014. While the Act establishes clear statutory rights to assessment, eligibility determination, and the provision of support, local authorities are simultaneously prohibited by public finance law from overspending their budgets. They are therefore placed in an impossible position: they cannot lawfully refuse care, yet they cannot afford to provide it in full. These dynamics arise not only from institutional design but from genuine fiscal constraints on public expenditure; however, such constraints do not resolve the structural disjunction between legal entitlement and deliverable provision. The result is not open denial but administrative rationing through delay, repeated reassessment, and time-limited provision. Drawing on Franz Kafka's account of bureaucratic power and classical political theory, the paper shows how this contradiction converts legal rights into private financial and psychological burdens. It identifies three interlocking mechanisms: a Kafkaesque administrative architecture governing access to care; the Carousel of Temporary Care; and the Public Accountability Shield. The paper concludes that this structure recreates a modern form of economic dependency analogous to debt bondage and argues that only enforceable financial transparency, combined with a dedicated Health and Social Care Tribunal grounded in the principle of avoidable harm, can restore the practical meaning of Care Act rights. This architecture of power provides a useful analytical framework for understanding the operation of England's adult social care system in practice.

Kafka, Bureaucracy, and the Architecture of Power

Franz Kafka's *The Trial* and *The Castle* are not merely literary explorations of alienation. They are among the most precise political anatomies ever written of how bureaucratic power operates when detached from accountability, transparency, and enforceable justice. Both novels describe systems in which authority is exercised not primarily through overt coercion, but through procedural opacity, delay, and the systematic exhaustion of the individual's psychological, material, and temporal resources. Kafka's genius lies in identifying that modern power does not need to terrorise order to dominate. It need only control access to recognition, process, and resolution.

In *The Trial* (1914 to 1915), Josef K. is arrested without charge and subjected to an endless legal process whose rules, decision-makers, and objectives remain permanently obscured. The court does not need to prove guilt; it only needs to keep Josef K. engaged in a process that consumes his attention, his time, his income, and eventually his health. The absence of clarity is not an accident. It is the mechanism by which the system maintains control. By never articulating the charge, the court prevents Josef K. from mounting a meaningful defence, while simultaneously obliging him to remain within its jurisdiction.

In *The Castle* (1922), the same power structure is expressed from the opposite position. K., the land surveyor, is not trapped inside a process but excluded from it. His entire existence becomes a quest for recognition by an unreachable authority whose decisions determine his right to belong, to work, and to survive. Here again, the defining feature is not hostility but impenetrability.

Authority is exercised through gatekeepers, procedural ambiguity, and perpetual deferral. Every attempt to obtain recognition generates further layers of mediation, none of which possess the power to resolve the underlying claim. Together, the two novels describe a complete political system: one governing those already caught within it (*The Trial*), and one governing those seeking entry (*The Castle*). In both cases, the individual's subordination is achieved through the same structural means: the monopolisation of legitimacy, the fragmentation of decision-making, and the indefinite postponement of resolution. This architecture of power provides a useful analytical parallel in the operation of England's health and social care bureaucracy. Under the Care Act 2014, individuals possess statutory rights to assessment, determination of eligible needs, and the provision of support where those needs are established. On paper, this appears to be a legal system grounded in enforceable entitlements. In practice, however, access to those entitlements is mediated through complex administrative processes characterised by delay, opacity, repeated reassessment, and fragmented responsibility.

These processes function in a manner closely resembling that described by Kafka: not as neutral procedures, but as instruments of control. For individuals already within the system — those with existing care packages, ongoing disputes, or unresolved assessments — the experience mirrors *The Trial*. They are subject to continual procedural engagement: reviews, reassessments, funding panels, and eligibility disputes. Yet the criteria governing these decisions are rarely transparent, and the ultimate locus of authority — the point at which responsibility crystallises into an enforceable obligation — remains perpetually out of reach. Like Josef K., service users are kept inside a process that consumes their time, finances, and psychological energy without delivering finality.

For those attempting to access support for the first time, the experience more closely resembles *The Castle*. At the “front door” of social services, individuals encounter a succession of gatekeepers: contact centres, screening teams, junior social workers, and referral panels. Each can delay, redirect, or request further information, but few have the authority to determine entitlement. Recognition of need is always conditional, always provisional, and always subject to further procedural hurdles. As in Kafka's village, the authority that ultimately matters remains distant and inaccessible.

These dynamics are reinforced by the modern bureaucratic imperative to prevent fraud and control expenditure. While fiscal prudence is a legitimate public concern, it generates an administrative culture in which every applicant is treated as a potential risk. This produces systems designed not to identify genuine need efficiently, but to filter, defer, and discourage claims. The result is structurally indistinguishable from Kafka's castle bureaucracy: a defensive apparatus that cannot reliably distinguish between the fraudulent and the legitimate and therefore obstructs both. In this context, the concept of natural justice becomes increasingly hollow. **Kafka's** novels are disturbing not because the law is harsh, but because it is absent. Josef K. is never told the charge against him; K. is never given a definitive decision. In both cases, the fundamental principles of justice — clarity, the right to be heard, and the possibility of resolution — are systematically denied. The same limitations in access to natural justice can now be observed across much of the social care system. Although legal rights exist in theory, the cost of enforcing them through judicial review or litigation places them beyond the reach of most individuals. Ombudsman processes can identify maladministration but cannot compel compliance or restore lost resources.

Courts can examine procedural legality but cannot order the funding necessary to remedy substantive harm. The result is a system in which rights exist formally but lack practical force. Kafka understood this condition with unsettling clarity: power is most absolute when it is exercised through procedures that appear lawful but are insulated from meaningful challenge. In such systems, the process itself becomes the punishment. Individuals are worn down not by violence, but by endless engagement with a bureaucracy that controls recognition, access, and survival while remaining structurally immune to accountability. That is the modern Kafkaesque condition — and it defines, in important respects, the lived reality of England’s adult social care system.

The Carousel of Temporary Care Structural Deferral as a Mechanism of Harm

The crisis of adult social care in England is often described as a shortage of funding, workforce, or capacity. These descriptions are accurate but incomplete. The deeper failure is structural. Chronic underfunding has not merely weakened provision; it has transformed the operating logic of the system itself. What now exists is a form of defensive bureaucracy whose primary function is not the delivery of statutory care, but the management of institutional risk. This defensive system manifests most clearly in what can be described as the **Carousel of Temporary Care**.

The Carousel is not an aberration. It is the rational adaptation of local authorities to a legal and financial contradiction. Councils are legally required to meet eligible needs under the Care Act 2014 yet prohibited by Section 114 of the Local Government Finance Act from spending beyond their available resources. When legal duty collides with fiscal impossibility, a third option emerges: procedural deferral. Under the Carousel, a person with an undeniable statutory need is acknowledged, but instead of receiving a stable, lawful care package, they are placed on a succession of short-term, non-statutory, or time-limited support arrangements — typically six to eight weeks at a time. These packages are frequently delivered through voluntary or charity-sector intermediaries, creating the appearance of support while avoiding the legal and financial commitments of a full statutory provision.

When the temporary package expires, responsibility silently reverts to the family carer. The statutory duty remains unresolved, but the immediate crisis has been deferred. When the situation again becomes unsustainable — through exhaustion, deterioration, or medical emergency — the cycle repeats. Another short-term intervention is authorised. Another delay is purchased. Another round of unpaid labour is extracted from families. This is not inefficiency. It is a deliberate risk-transfer mechanism. The Carousel shifts the burden of systemic underfunding away from public budgets and onto private endurance. The council’s financial exposure is capped; the family’s is not. The local authority is protected from breach of budget; the carer is exposed to collapse. What is rationed is not need but time — the time until a crisis becomes unavoidable, and the time until someone else absorbs the cost.

The endpoint of the Carousel is predictable. It does not resolve need; it merely postpones it. The cycle ends only when either the care recipient suffers a major health event or the carer experiences physical or psychological breakdown. At that point, the accumulated neglect crystallises into an emergency — often far more expensive, and far more damaging, than lawful early intervention would have been.

This is why the process itself becomes a form of harm. The repeated deferral of statutory duty produces what can only be described as avoidable harm: suffering not caused by illness or disability, but by the architecture of the system designed to manage it.

The Carousel is therefore not a failure of compassion or professionalism. It is the predictable operational expression of a system forced to choose between illegality and insolvency — and choosing instead to rely on the endurance of those it serves.

Solon, Debt, and the Constitutional Meaning of Care

“Although the United Kingdom is the world’s fifth largest economy, one-fifth of its population (14 million people) live in poverty, and 1.5 million experienced destitutions in 2017... Close to 40 per cent of children are predicted to be living in poverty by 2021” (Philip Alston, 2019).

To understand why this system is not merely inefficient but unjust, it is necessary to return to one of the oldest insights in political theory: that economic independence is a precondition of citizenship.

In sixth-century BCE Athens, widespread debt had reduced large sections of the population to effective servitude. Citizens known as the *Hektemoroi* were forced to surrender a portion of their labour or produce to creditors, leaving them formally free but practically dependent. The political consequence was profound. A citizen who is economically dependent cannot exercise meaningful political agency. Legal rights become hollow when survival depends on the will of others. **Solon’s great reform, the Seisachtheia** — the “shaking off of burdens” — abolished these debts and restored economic independence to the citizenry. This was not merely a financial intervention. It was a constitutional act. By freeing citizens from debt bondage, Solon restored their capacity to participate as equals in public life. Justice, in this classical understanding, was not separable from material security.

Modern social care reproduces this ancient problem in a new form. Under the Care Act 2014, individuals possess legal rights to assessment, eligibility determination, and support. Yet where these rights are not delivered in practice, families are compelled to fund the gap themselves. They incur costs for private carers, equipment, respite, transport, supervision, and crisis support, often drawing on savings or liquidating assets. Economic independence is progressively eroded. This is not voluntary expenditure but a form of coerced substitution. Just as the Athenian debtor was formally free but substantively unfree, today’s carer and disabled person may hold legal rights while being driven into financial dependency in order to realise them. The result is a modern form of debt bondage: not to private creditors, but to a system that transfers its legal failures into private cost. As families fall below the capital threshold, they lose not only financial security but autonomy; choice narrows, advocacy weakens, and political voice is diminished by exhaustion and financial strain. The parallel to the ancient polis is not exact in historical detail, but it is structurally instructive: economic insecurity undermines the practical exercise of rights.

For this reason, the failures of social care are not merely administrative but constitutional in character. A state that declares rights while requiring citizens to exhaust their own resources to realise them risks undermining the very justice those rights are intended to secure. Solon recognised that a society cannot remain stable when its citizens are reduced to dependency by structural design. In this respect, the modern Care Act system, as currently funded and enforced, risks reproducing similar conditions. The Carousel of Temporary Care is its operational expression. Until economic security is restored to those whose needs give rise to statutory rights, those rights will remain formal rather than real, and the promise of justice will continue to ring hollow.

The Public Accountability Shield

How the State Insulates Itself from the Consequences of Its Own Law

The failures of England's adult social care system cannot be understood as a collection of isolated administrative errors. They arise from a structural arrangement that allows legal duties to exist without enforceable responsibility.

This arrangement forms what can be described as the Public Accountability Shield: a three-layered architecture that protects the state from the consequences of breaching its own statutory obligations. The Shield does not depend on individual bad faith; it arises from institutional design. Precisely because the failure is structural rather than moral, it can only be resolved through a new social care settlement that brings legal entitlements, financial provision, and enforceable accountability back into alignment with the Care Act 2014.

I. Central Government and the Unfunded Mandate

The Care Act 2014 establishes clear legal entitlements. Where an adult has eligible needs arising from physical or mental impairment, the local authority is under a statutory duty to ensure those needs are met. These are not discretionary powers; they are legal obligations. Yet central government has never provided funding remotely sufficient to meet those obligations across the country. This creates what, in constitutional and fiscal theory, is known as an unfunded mandate: Parliament imposes legal duties while withholding the resources required to discharge them. The political effect of this arrangement is subtle but powerful. When failures occur, responsibility is deflected downward. Local authorities are blamed for poor delivery, while the Treasury remains insulated from scrutiny for having made compliance impossible in the first place. Law is created at the centre; failure is localised.

This separation between legal authority and financial responsibility constitutes the first layer of the Shield.

II. Local Authority Administrative Rationing

Local authorities are placed in an impossible position: they are legally prohibited from overspending their budgets yet required to meet eligible needs. These dynamics arise not only from institutional design but from genuine fiscal constraints on public expenditure; however, such constraints do not resolve the structural disjunction between legal entitlement and deliverable provision. Authorities cannot lawfully refuse care, but neither can they afford to provide it in full.

The result is a form of administrative rationing. This does not take the form of explicit denial, which would be unlawful. Instead, it operates through delay, repeated reassessment, procedural complexity, minimal or time-limited provision, and the deferral of decisions. These techniques preserve fiscal control while maintaining the appearance of lawful process. Their effect is to transfer the burden of care onto families. When statutory provision is delayed or diluted, unpaid carers and private expenditure fill the gap. What local authorities do not fund is borne by individuals.

This constitutes the second layer of the Shield: the conversion of legal failure into private cost.

The Committee on Economic, Social and Cultural Rights recommended in 2016 that the United Kingdom review entitlement conditions and reverse cuts to social security benefits introduced by the Welfare Reform Act 2012 and the Welfare Reform and Work Act 2016 (E/C.12/GBR/CO/6, para. 41). However, as noted by the Equality and Human Rights Commission (2024), the principal reductions in benefits remain in place.

III. The Weakness of Redress

In any genuine system of rights, failure must carry consequence. Yet the mechanisms available to individuals harmed by social care failures are structurally limited in their capacity to secure effective remedy.

The Local Government and Social Care Ombudsman may identify maladministration, but it cannot compel compliance or mandate systemic change. Its remedies are typically modest, discretionary, and retrospective.

Judicial review provides a means of scrutinising the lawfulness of decision-making, but its focus remains on process rather than substantive adequacy. While courts may intervene where decisions are unlawful, irrational, or incompatible with statutory or human rights obligations, they do not ordinarily substitute their own assessment of need, nor do they direct the allocation of finite public resources. In practice, even a successful challenge commonly results in the decision being retaken within the same structural and financial constraints that produced the original outcome. The result is a form of remedial insufficiency: rights may be formally recognised and breaches identified, yet the mechanisms available rarely secure restoration of what has been lost in any substantive sense.

This position is reflected in case law. In *R (McDonald) v Royal Borough of Kensington and Chelsea* [2011] UKSC 33, the Supreme Court upheld the lawfulness of a decision to reduce care provision, emphasising the adequacy of the reassessment process rather than the substantive outcome. Similarly, in *R v Gloucestershire County Council, ex parte Barry* [1997] AC 584 (HL), the House of Lords confirmed that a local authority may take its financial resources into account when determining what services are “necessary.” Together, these authorities illustrate that legal scrutiny is directed primarily at the manner in which decisions are made, rather than the sufficiency of the care ultimately provided.

Evidence from the Equality and Human Rights Commission supports this conclusion in practice. Its inquiry into adult social care found that many service users and carers lacked confidence that local authority systems would respond effectively to concerns, with reports of complaints being ignored or inadequately addressed. Notably, 47% of carers identified the belief that raising a concern would make no difference as the principal barrier to doing so, indicating not merely dissatisfaction but a loss of confidence in complaint mechanisms as meaningful routes to remedy (Equality and Human Rights Commission, 2023).

International human rights law recognises “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health” under Article 12 of the International Covenant on Economic, Social and Cultural Rights. However, within the European framework, the threshold for establishing a violation of Articles 2, 3, or 8 of the European Convention on Human Rights in the context of social care remains high, and the margin of appreciation afforded to public authorities is wide. As a result, even significant deterioration in living conditions may fall short of engaging enforceable rights, reinforcing the gap between formal entitlement and practical remedy (Equality and Human Rights Commission, 2025). The result is not the absence of rights in principle, but their attenuation in practice: a system in which legal entitlements are recognised, yet their realisation is mediated through procedural compliance, resource constraint, and structurally limited mechanisms of redress.

This constitutes the third layer of the Shield: remedial insufficiency in the face of recognised legal failure.

1. The Shield as a System of Impunity

Together, these three layers create a system in which the state can enact rights, fail to deliver them, and remain insulated from meaningful legal or financial consequence. Parliament establishes statutory entitlements, while funding constraints limit their practical delivery; local authorities manage this tension through procedural rationing; and redress mechanisms identify failure but are limited in their capacity to secure effective remedy. The result is a political economy of risk displacement, in which the consequences of under-provision—financial strain, physical harm, and psychological burden—are borne primarily by individuals and their families rather than by the state.

This configuration is not incidental but structural. Its logic is reflected in the legal framework governing adult social care. In *R v Gloucestershire County Council, ex parte Barry* [1997] AC 584 (HL), the House of Lords confirmed that a local authority may take its financial resources into account when determining what services are “necessary.” The effect is that the content of the statutory duty is shaped, at the point of definition, by available resources.

This position is reinforced in later case law. In *R (McDonald) v Royal Borough of Kensington and Chelsea* [2011] UKSC 33, the Supreme Court upheld the lawfulness of a decision to reduce care provision, emphasising the adequacy of the reassessment process and the rationality of the authority’s decision. The Court did not determine whether the resulting level of care was substantively sufficient, but whether the decision-making process was lawful.

Taken together, these authorities illustrate a consistent principle: legal scrutiny is directed primarily at the way decisions are made, rather than the adequacy of the outcomes they produce. In this respect, law operates less as a guarantee of provision than as a framework within which scarcity is managed.

The limits of redress follow from this structure. As discussed above, the Ombudsman lacks enforcement powers and judicial reviews do not address substantive adequacy. Within the human rights framework, the threshold for establishing a violation in the context of social care remains high, and the margin of appreciation afforded to public authorities is wide. As a result, even significant deterioration in living conditions may not engage enforceable rights.

Reform cannot be achieved through guidance, training, or marginal increases in funding alone. So long as the Shield remains intact, statutory rights will continue to be mediated through resource constraint and procedural compliance. In such a system, law functions less as a mechanism of protection than as a form of institutional assurance: rights exist in formal terms, but their breach does not reliably generate material consequence. This is the Public Accountability Shield.

What is required is a mechanism that links findings of avoidable harm more directly to enforceable consequences. One such institutional response would be the creation of a Health and Social Care Tribunal, capable of linking such findings to binding remedies.

Ethics

This manuscript is a case-based policy and systems analysis written by a family member and does not involve the collection of new data, clinical intervention, or research involving human subjects. All potentially identifying personal information has been removed or anonymised.

Limitations

This paper presents a conceptual and structural analysis rather than an empirical study. The frameworks developed — including the Carousel of Temporary Care and the Public Accountability Shield — are interpretive models intended to describe systemic tendencies rather than uniform practice across all local authorities. While the analysis draws on legal frameworks, institutional evidence, and published sources, it does not seek to quantify the prevalence or distribution of these dynamics. Further empirical research would be required to assess their scale, variation, and impact across different settings.

References

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