

Getting what you need from public services: understanding and using the law

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Structure

Introduction

A

How is the law relevant to my issue?

B

How law works

C

Getting something done about it



Introduction

- Not always a fight
- Not always worth the fight
- The law won't always say what you want it to say





How is the law relevant to my
issue?





Public law

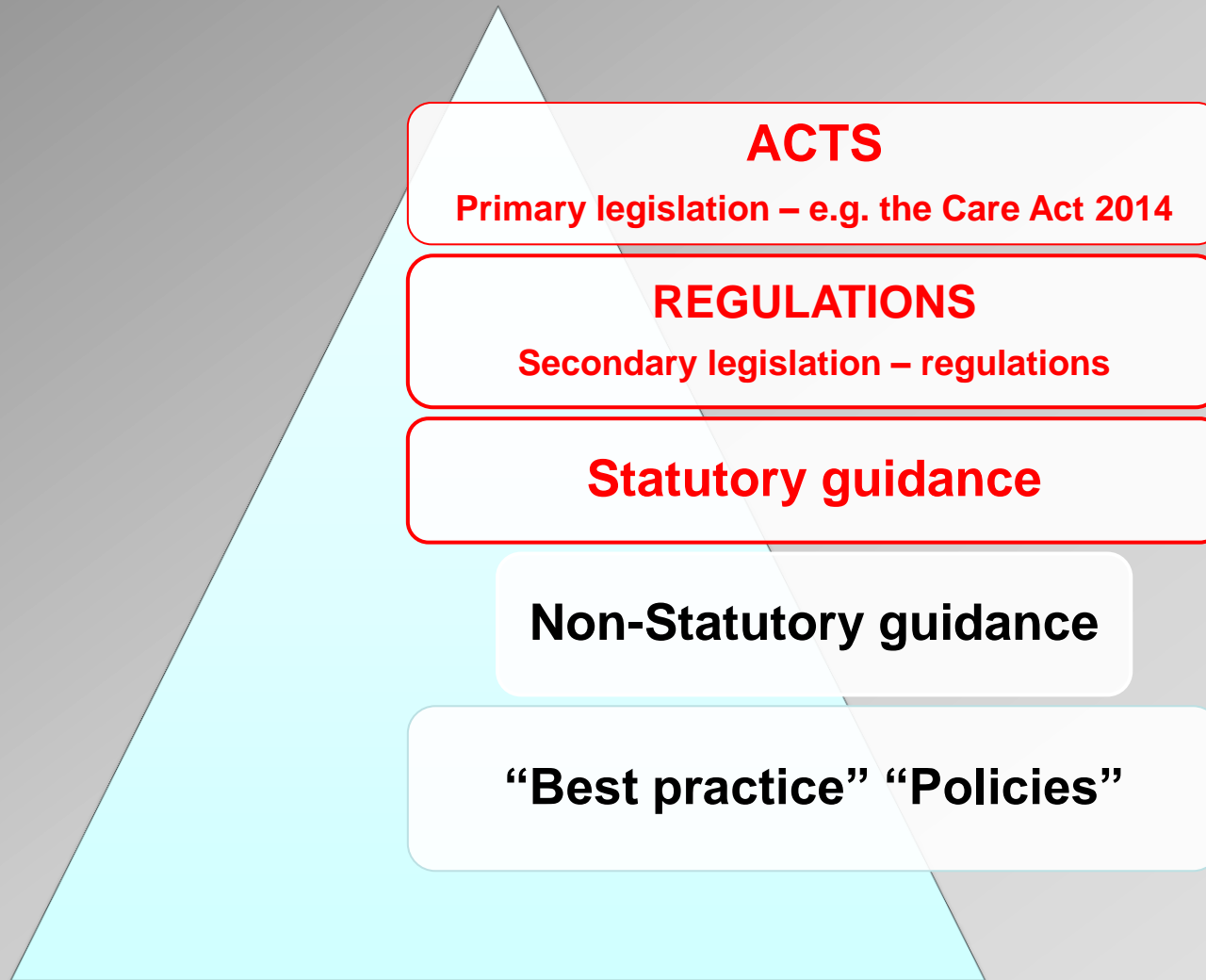


Legal framework





What law looks like



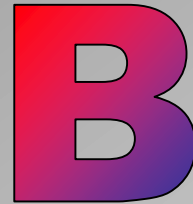
Case Law





What are the main rules?



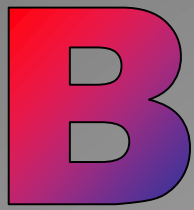


How law works



General vs. Specific





Do they HAVE to?

- “**Must**” means: this is LAW. The public body has to do it. It is in the Act or in the regulations.
- “**Should**” means: there isn’t a specific legal duty in the Act or regulations. BUT the government really wants the public body to do this and they have to unless they’ve got a really sound legal reason why not (not just “We don’t want to”)
- “**May**” means: the public body can do it if they want to, but they don’t have to
- “**Should not**” or “**must not**” means: that something would be unlawful and the public body is not allowed to do it





Try this:

Sample A (Care Act Statutory Guidance)

- 6.22 The assessment process starts from when local authorities start to collect information about the person. From their very first contact with the local authority, the person **must** be given as much information as possible about the assessment process, as early as possible, to ensure a personalised approach to the assessment. This **should** include detail of what can be expected during the assessment process (such as the format and timescale of assessment, complaints processes and possible access to independent advocacy) and allow them to be as involved in the process as possible. Local authorities **must** ensure that this information is in an accessible format for those to whom it is provided. For example, Braille **may** be an appropriate format for many with partial-sightedness or who are blind. Some formats are less accessible for certain groups, such as online platforms for those with particular sensory impairments.



Another example:

Sample B (Care Act Statutory Guidance)

6.24 Getting the initial response right **can** save time and costs on assessment later. **Some local authorities have found** that putting in place a single access point for all new requests and people currently receiving care **can** speed up and simplify the process for people approaching the authority; and **can** also free up time for professional staff to focus on more complex cases.

6.25 Local authorities **should not**, however, remove people from the process too early. Early or targeted interventions such as universal services, a period of reablement and providing equipment or minor household adaptations **can** delay an adult's needs from progressing. The first contact with the authority, which triggers the requirement to assess, **may** lead to a pause in the assessment process to allow such interventions to take place and for any benefit to the adult to be determined. Local authorities **must** ensure that their staff are sufficiently trained and equipped to make the appropriate judgements needed to steer individuals seeking support towards information and advice, preventative services or a more detailed care and support assessment, or all of these. They **must** also be able to identify a person who may lack mental capacity and to act accordingly.



Public Law Principles

- Act **lawfully**: public bodies must comply with all laws (including human rights) and not fetter their discretion
- Act **reasonably**: this only means **rationally** (i.e. a decision that a reasonable person could reach on the basis of evidence) that does NOT necessarily mean a decision you agree with
- Act **fairly**: not making assumptions, due process, avoiding conflicts of interest, consulting properly, giving people a fair hearing

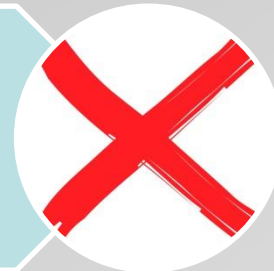


Act lawfully

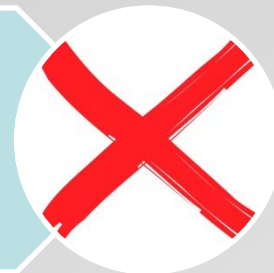
Complied with
specific duties?



Complied with
Equality Act?



Complied with
Human Rights Act?



B

Act lawfully: not fettering discretion

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Act reasonably



Act fairly





Act fairly

Everyone consulted/involved?



Everything relevant
considered?



Irrelevant not considered?



Professionals acted without
bias?





Getting something done
about it

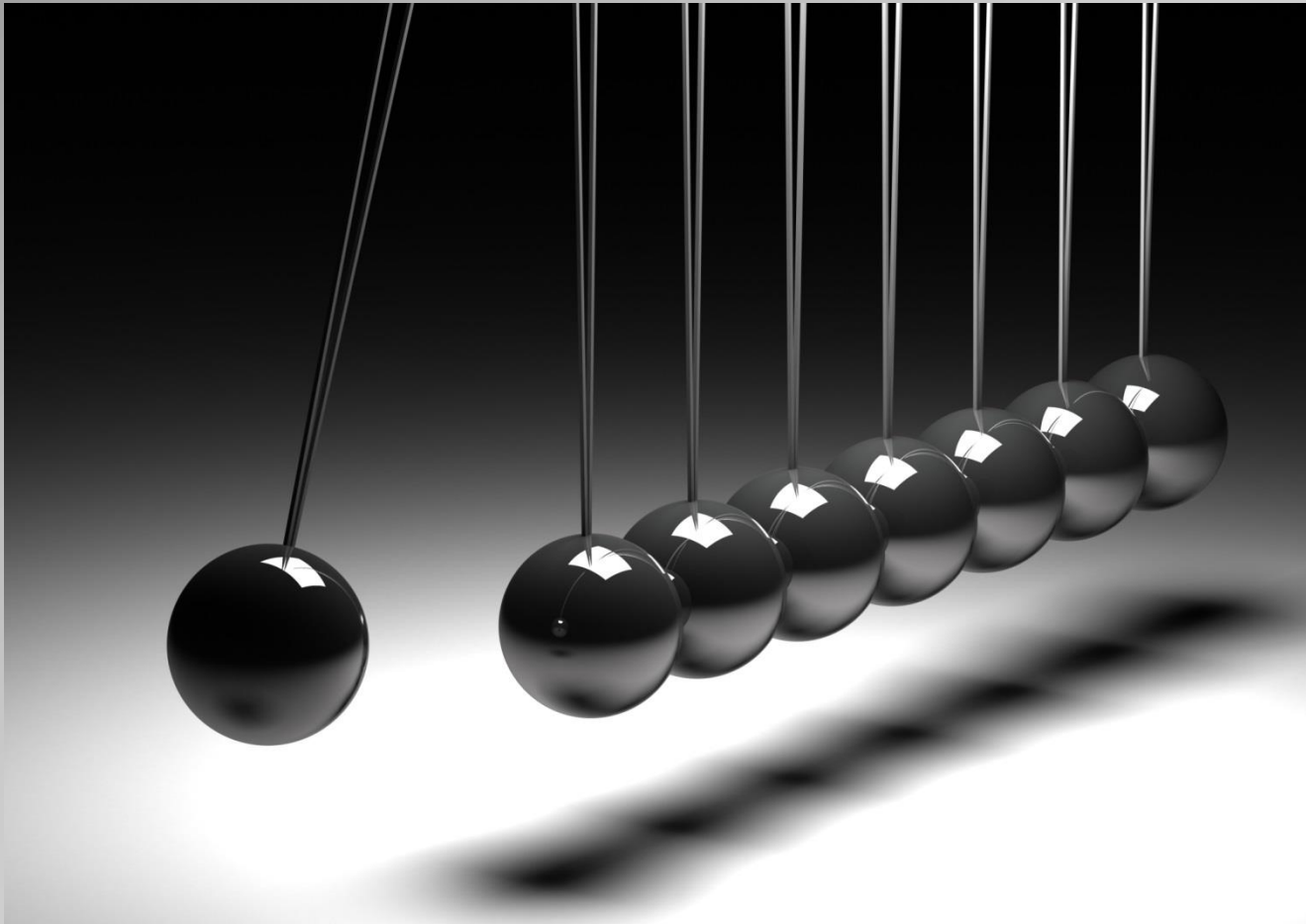


C How strong is your case?





How strong is your case?: consequences



C

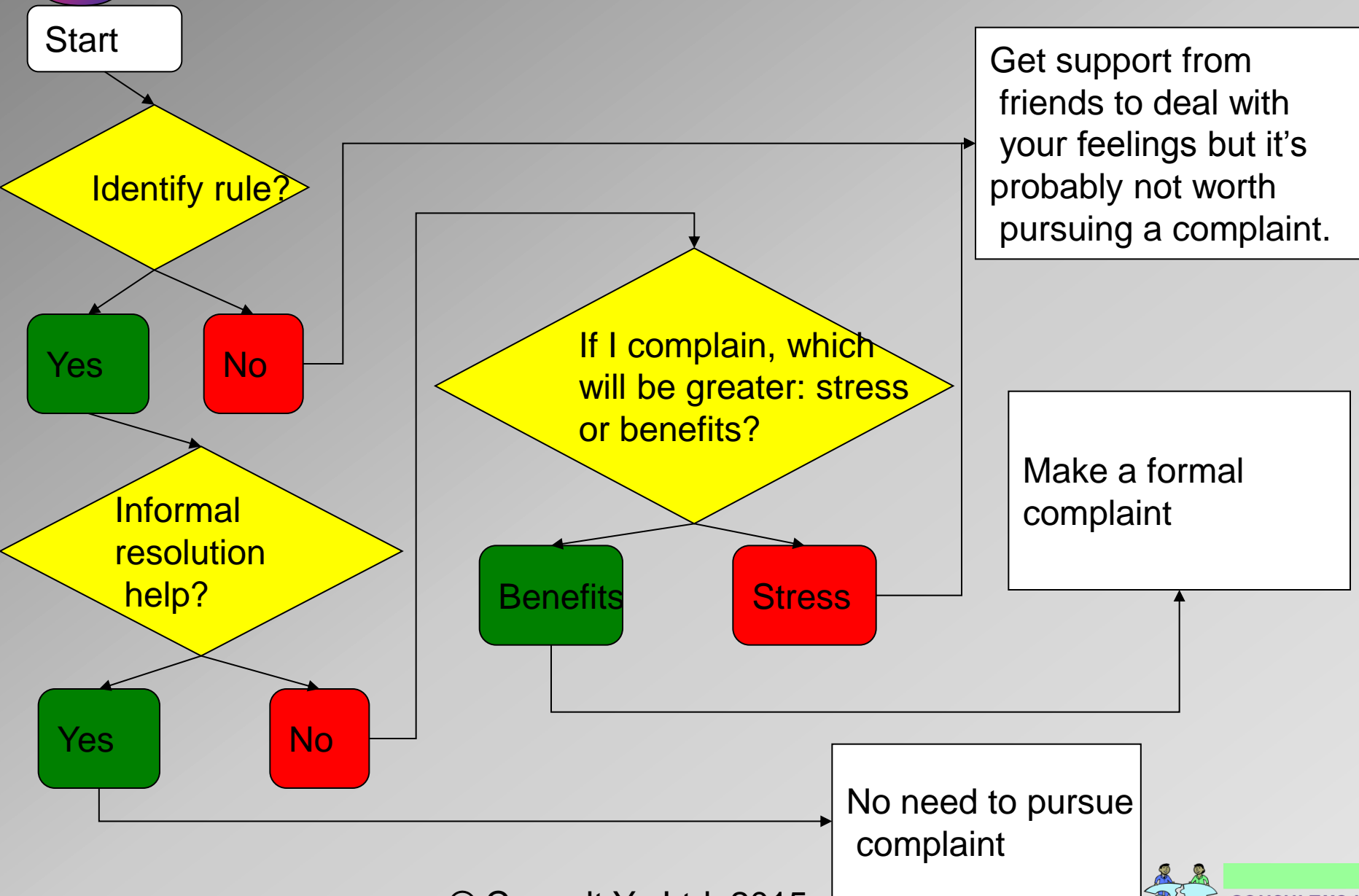
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What do you want to achieve?





Is it worth it?





How to pursue a legal case

- Complaint first (unless very serious consequences)
- Tribunal (benefits and children's education)
- Ombudsman (if applicable)
- Judicial Review
 - Legal Aid
 - Applying (new restrictions)
 - Finding a solicitor with the right expertise (actually good to do before applying for legal aid)



Question and Answer session

