

Care Act 2014

Key provisions for carers

Summary

The Care Act received Royal Assent on the 14th of May 2014. Part 1 of the new Act consolidates and modernises the framework of social care law. This briefing covers the main relevant provisions for carers.

The Care Act brings those funding their own care into the care system with obligations on local authorities relating to information and advice, universal services, assessments and market shaping among others all applying to self-funders. It also sets out a new model of paying for care, putting in place a cap on the care costs which an individual is liable for.

Importantly, the Act strengthens the rights and recognition of carers in the social care system, including, for the first time giving carers a clear right to receive services. These are by far the strongest rights for carers yet.

The Care Act covers **adult** social care in **England** only. The Children and Families Act 2014 includes new duties for the assessment of young carers and parent carers of children under 18.

Much of the practical detail is in the regulations and guidance accompanying the Act. A consultation on draft regulations and guidance will take place during the summer of 2014 and final regulations and guidance will be published in October 2014 ready for implementation in April 2015.

Well-being duty

Section 1 of the Care Act establishes the 'well-being principle' – an overarching approach that local authorities should take when exercising their responsibilities under the Act.

Well-being covers a range of outcomes such as physical and mental and emotional well-being. It also covers participation in work, education and training and social and economic well-being.

The Government took on board Carers UK's suggestions that this needed to be clearer

in how it related to carers so **the Act now refers to ‘individuals’ and so clearly refers both to those with care needs and to carers.**

The duty on local authorities is a ‘target’ duty - that is one which directs the way they carry out their legal functions towards the public but does not confer rights on **individuals.**

Prevention duty

Section 2 of the Act places a new duty on local authorities to provide or arrange for services, facilities or resources which will prevent or delay the development of, or reduce the needs for care and support of, adults.

After work by Carers UK, this section now includes a specific reference to carers and to preventative support services which reduce carers’ need for support.

Local authorities are able to charge for preventative services but the language originally in the draft Bill has changed from ‘enabling a local authority to impose a charge’ to ‘permit a local authority to make a charge’.

Duty to provide information and advice

The Act requires local authorities to provide information and advice relating to care and support locally. This section replaces and expands duties in section 1 of the Chronically Sick and Disabled Persons Act 1970, by requiring local authorities to provide an information and advice service in relation to care and support for adults, and support for carers. There are specific areas that the local authority’s commissioned information and advice services will have to cover, such as types of care and support, the providers people can choose from, how to access care and support and how to raise concerns about safeguarding. Under the Act this will now include how to access independent **financial advice.**

Assessment

The Act makes clear that both adults (needs assessment) and carers (carers assessment) should be assessed on the appearance of need and regardless of what the local authority thinks is the level of their need and regardless of their financial resources.

The assessment must consider how the person’s needs impact on their well-being and the outcomes that they wish to achieve in day-to-day life. The adult’s needs assessment must focus on outcomes of the person and the authority must also consult the carer.

For carers this means **two significant changes to the current law on carers' assessments**. It removes the requirement to ask for an assessment **and** it removes the requirement for the carer to be providing substantial care on a regular basis.

Instead, the only requirement is that the carer 'may have needs for support – whether currently or in the future'. The requirement to assess a carer on the appearance of need puts the carer's assessment on the same footing as the disabled person's assessment.

When the Act was published the assessment sections included a requirement for the assessment to look at factors beyond formal services such as the contribution of friends and family and the person's 'own capabilities'. Carers UK expressed serious concern that this could lead to an assumption that families would provide care before formal services were explored.

The Act now requires local authorities to consider whether the adult would benefit from preventative services, information and advice or anything which might be available in the community.

The Act also highlights a number of important areas for regulations to expand on:

Whole family approach

The regulations may require the local authority to have regard to the family needs of the person being assessed, for instance the need to ensure that a child is not undertaking an inappropriate caring role for the adult concerned.

This Act also makes clear that a local authority may combine a needs or carer's assessment with another assessment it is carrying out of the individual or another person subject to their agreement. For example, a local authority may combine an assessment of a young carer with the needs assessment of the adult he or she cares for.

This section also ensures that a local authority, when carrying out a needs or carer's assessment, may work jointly with or on behalf of another body which is carrying out another assessment. For example, if a local authority is carrying out a carer's assessment, and an NHS body is carrying out a continuing healthcare assessment of the person he or she is caring for, the local authority could jointly carry out the continuing healthcare assessment jointly with the NHS body.

Eligibility

The Care Act puts in place a national eligibility threshold setting one national level at which needs are great enough to qualify for funded services. This will replace the Fair Access to Care System (FACS) which allowed local authorities to choose between four levels of eligibility. By establishing who will receive funding from the local authority for

care services, the eligibility threshold also decides what spending will contribute towards the cap on care costs that will be introduced in 2016.

For the first time there will also be an eligibility threshold for carers. Details of the eligibility threshold will be set out in regulations.

Duty to meet for care and support

The Act sets out the circumstances where a local authority has a duty to meet an adult's care needs. It also creates the **first ever entitlement to support for carers**.

When someone has eligible needs but has financial means greater than the means test, they would not normally be entitled to local authority arranged support. However, they may ask the local authority to arrange services on their behalf. This request triggers the local authority's duty to meet needs.

In this regard, the Act makes a significant change to the current legal duty on local authorities to meet needs regardless of their finances – although in practice self-funders are generally told by local authorities to organise and pay for their own care.

Under the Care Act 2014 a person will be entitled to have their needs met when:

- the adult or carer has “eligible” needs,
- the adult's established home is there

and one of the following five situations apply to them.

- there is no charge for the type of care and support they need;
- the person cannot afford to pay the full cost of their care and support;
- the person asks the local authority to meet their needs;
- the adult does not have mental capacity and has no one else to arrange care for them;
- when the cap on care costs comes into force, their care and support costs have exceeded the cap (applies to adults only).

The Act makes clear that a local authority does not have a duty to meet eligible needs that are being met by a carer. If a carer were to cease providing care and to stop meeting any eligible needs, this would trigger a review of the adult's care and support plan, and may mean that the local authority is required to meet the needs.

Charging and financial assessment

Section 14 of the Act sets out that a local authority may charge for services including carers' services. It gives local authorities the power to charge for services it is under a duty to provide, i.e. those that meet the eligible needs of either the adult needing care for their own services or the carer for their own services. Such a charge can only cover the cost that the local authority incurs in meeting the needs.

In circumstances where an individual has eligible needs and has assets above the financial thresholds but has asked the local authority to meet those needs, the local authority can charge for these services. They may also charge for putting in place the arrangements. Up until now, it has only been the services that have been charged for, not the 'management' or 'arrangement' of services.

The wording in the Act has been altered from the wording of the draft Bill. Carers UK had expressed concern about the use of the term 'impose' charges in the draft Bill, which we felt was unnecessarily strong, and welcomes the change of language.

Carers UK has expressed great disappointment that the Government did not take the opportunity to remove the power to charge carers from local authorities. Currently very few local authorities do charge for carers' services but given the difficult financial climate, Carers UK is concerned that this may not continue.

Although the Act says that where a local authority makes a charge for meeting a carer's needs by providing care and support to an adult needing care, it may not charge the carer. Throughout the passage of the Act Carers UK raised concerns that the wording is not clear enough to prevent confusion about whether a service is being provided to the adult with care needs or to the carer. This is important because the person whom the service is provided to is the one that will be charged.

Care and support planning

Once it has carried out a needs assessment or carer's assessment (and the financial assessment where relevant) and a local authority has a duty to meet needs, a local authority must:

- Prepare a care and support plan for an adult with needs for care and support, or a support plan for a carer
- Inform the adult which of their needs it will meet and where direct payments may be used to meet needs.
- Help the adult in deciding how to have their needs met.

Where a local authority is not required to meet needs it must provide:

- A written explanation of the reasons why it is not going to meet their needs and information and advice in writing on how the adult can meet or reduce their needs.

Where the adult has eligible needs for care and support, but the local authority does not have a duty to meet these needs (because, for example, the adult does not want to have their needs met by the local authority). It requires the local authority to prepare an independent personal budget.

Continuity of care

“Continuity” means making sure that, when an adult who is receiving care and support in one area of England moves home, they will continue to receive care on the day of their arrival in the new area. This means that there should be no gap in care and support when people choose to move home.

This continuity duty requires the second authority to meet any of the needs that were being met by the previous (first) authority, from the day that the person arrives in the new area. This also applies to the needs of any carer moving with the person.

The continuity duty continues until the second authority has carried out its own assessment and put in place all necessary care and support on the basis of that assessment. This should ensure that that people won’t experience any gap in their care.

Duty to promote diversity and quality in provision of services

Section 5 sets out a new duty on the local authority to promote a diverse and high quality market in services for meeting care and support needs, ensuring that people have a variety of providers and high quality services to choose from, and sufficient information to make a decision about services.

Carers UK campaigned for the legislation to emphasise the need for services which enable carers to work alongside caring. In exercising this duty the Act requires local authorities to consider the importance of carers and disabled people being able to access work, education and training when they look at whether there are sufficient services in the market.

It also places a duty on the local authority to consider future need and how providers might provide **sufficient** services to meet that demand.

Paying for care

Deferred Payment Agreements

Local authorities can currently defer a charge on a property if a person enters residential care and the value of their home is taken into account. Some local authorities do not actively pursue this policy. The Care Act places a duty on the local authority to operate a deferred payment system. The key difference in the legislation is that the local authority may now charge interest on those deferred payments, charge for the administration costs, and charge interest on those administration costs. This duty comes into force from **April 2015**.

Cap on care costs and the care account

The Care Act puts in place the legal framework for a new model of paying for care. The new model is based on the recommendations of the Dilnot Commission on long-term care funding and comes into force from **April 2016**.

Local authorities will be responsible for recording the progress of individuals towards the cap by administering a Care Account for those assessed as having eligible needs. The amount of money that counts towards the Care Account is the amount of money the local authority decides will meet the needs of the individual i.e., their personal budget. Whether it is the local authority or the individual or a combination of both that spends this money – the personal budget is what goes towards the cap.

Once the cap is reached the local authority must pay for any further care costs regardless of the financial means of the individual. The cap covers care costs only, so accommodation costs in residential care are not included, and only the cost of eligible needs counts towards the cap.

When the cap starts it will be set at £72,000 but will rise over time. Importantly, the cap will only apply to those receiving care services so the personal budget of a carer does not contribute to a care account or apply to a cap.

Delegating duties

Under the Act local authorities can delegate the majority of their functions with the exception of safeguarding, charging and duties to co-operate and integrate. Following a late change to the legislation, a local authority may also authorise a third party to exercise on its behalf its functions relating to direct payments.

This is a significant change as although the local authority can currently delegate its duties to carry out assessments, it cannot delegate a decision on eligibility.

Transition

When a local authority is requested to assess a child (including a young carer) who is receiving support under legislation relating to children's services, the Act requires them to continue providing him or her with that support through the assessment process. This will continue until adult care and support services is in place to take over – or until it is clear after the assessment that adult care and support does not need to be provided.

The Act also provides for parents and other carers of disabled children approaching adulthood to be assessed for support from adult social services. It should be noted that this assessment is referred to as the child's carer's assessment and so applies both to parents and others providing care to that child in transition.

These changes will help to ensure an effective transition where someone or their carer is reaching the age of 18 who is already receiving support.

Safeguarding

Where a local authority has reasonable cause to suspect that an adult in its area who has needs for care and support is experiencing risk or abuse (including financial abuse or neglect) and as a result is unable to protect themselves, they have to make enquiries to decide what action to take. These sections also establish safeguarding boards and place a duty on local authorities to protect the property of individuals who are being cared for away from home. They can also recover reasonable expenses from the adult for carrying out the latter duty.

Children and Families Act 2014

The Children and Families Act for the first time provides for a stand alone right to an assessment for young carers. As with the adult assessment, a young carer now has the right to an assessment on the appearance of need.

After campaigning by Carers UK with parents of disabled children, the Children and Families Act now also gives individuals with parental responsibility for a disabled child the right to an assessment of their needs by a local authority. It removes the requirement for such carers to be providing "a substantial amount of care on a regular basis" in order to be assessed, and requires local authorities to assess on the appearance of need, as well as on request.

In undertaking a parent carer assessment the Act also requires local authorities to have regard to the well-being of parent carers. The definition of well-being will be the same as in Part 1 of the Care Act 2014.

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