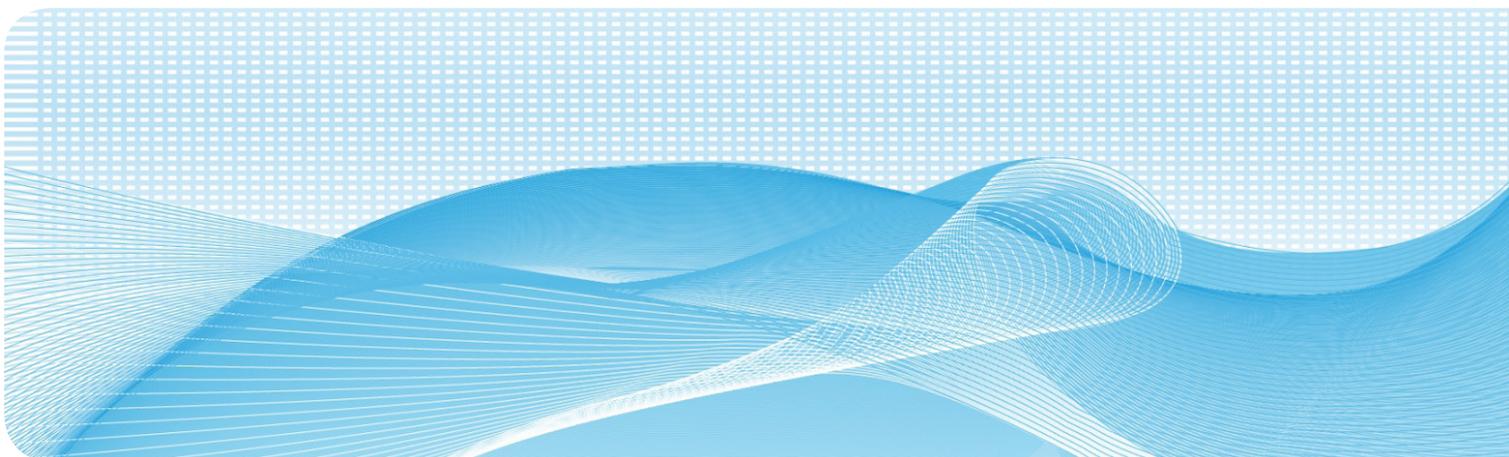
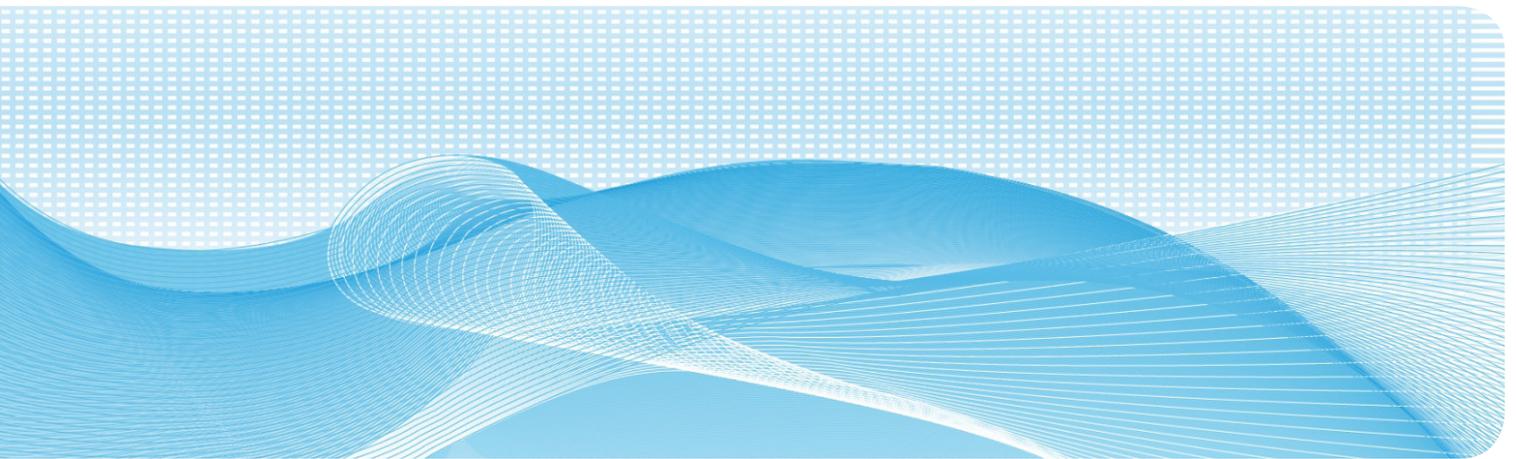


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**Supporting implementation of the Care Act 2014**  
December 2014

# Guide to the Care Act 2014 and the implications for providers



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# Guide to the Care Act 2014 and the implications for providers

The Care Act 2014, together with a range of regulations and statutory guidance, is the base upon which social care will develop over the next few decades.

It enshrines the new statutory principle of individual wellbeing, the driving force behind the Act, and makes it the responsibility of local authorities to promote wellbeing when carrying out any of their care and support functions.

Most of the Act's changes take effect from April 2015. However, the major reforms to the way social care is funded, including the care cap and care account and new power to establish an appeals mechanism, will not come into operation until April 2016.

## Key changes providers should be aware of

Although the legislative base is totally different, in practice much will remain the same for providers, although they should be aware of the following major changes:

1. **Principle of wellbeing** – understand the principle of wellbeing and consider if there are additional services providers might wish to supply.
2. **Assessment, including carers** – understand how the process works, be able to explain it to people seeking care and support, and guide them to their local authority.
3. **National Eligibility Criteria** – understand the criteria, be able to explain them to people seeking care and support, and guide them to their local authority.
4. **Care planning and review** – be able to identify outcomes within the care and planning process that will establish the cornerstone of a subsequent care plan.
5. **Deferred payments** – review commercial terms to be able to explain to clients and potential clients how to access deferred payments in line with local authority policy.
6. **Funding reforms** – providers should note that intermediate care for up to six weeks arranged by the local authority must be free of charge to the service user.

## New areas for providers

7. **Market shaping and commissioning** – consider involvement, and assess personal knowledge prior to engagement in the process.
8. **Managing provider failure and service interruptions** – understand local authorities' powers and duties when a care provider fails or the provision of a service is interrupted.
9. **Market oversight** – note CQC's new function to oversee the financial sustainability of providers that would be difficult to replace were they to fail.
10. **Statutory safeguarding** – be aware of the need for adult safeguarding policies and procedures and the areas to cover; benchmark against existing policies and procedures and draw up new ones where required. Access Safeguarding Boards annual reports.
11. **Information advice and guidance** – have in place information about services provided so that individuals can decide if those services are appropriate for them. Make this available to the local authority

so it can be incorporated into its advice and guidance.

12. **Duty of candour** – understand provider responsibility to be open when things go wrong and the action they are expected to take.

## New opportunities

13. **Prevention, including intermediate care** – consider what preventative services are currently offered and what could be delivered in the future.
14. **Independent advocacy** – consider offering this service to local authorities in future.
15. **Personal budgets and direct payments** – providers should review their commercial terms to enable people using their services to use personal budgets and direct payments.
16. **Integration, cooperation and partnership** – provider to consider what services it might offer now and in the future as a result of integration.
17. **Smoothing transition to adult care and support** – understand local authorities' duty to conduct a transition assessment.
18. **Ordinary residence** – understand which geographical local authority is responsible for each service user.
19. **Delegation of local authority functions** – providers should consider what existing services they might want to offer, and any new services they might wish to develop, that may fit with functions delegated by local authorities.

Links to further information: <http://www.local.gov.uk/care-support-reform> and (within this) support for providers: [http://www.local.gov.uk/care-support-reform/-/journal\\_content/56/10180/6527499/ARTICLE](http://www.local.gov.uk/care-support-reform/-/journal_content/56/10180/6527499/ARTICLE)

# Key changes providers should be aware of

## 1. Principle of wellbeing

Providers must be aware of the significant changes that local authorities must implement in April 2015 and in 2016, not least the new statutory principle of individual wellbeing.

Local authorities must promote wellbeing when carrying out any of their care and support functions in respect of a person, and that person should be enabled to participate as fully as possible in decisions at every stage in their care. This signifies a shift from existing duties on local authorities to provide particular services, to the concept of 'meeting needs' – now a core legal duty. It recognises that everyone's needs are different and personal to them and assumes that the individual is best placed to judge their own wellbeing, and what wellbeing means to them.

The new legislation recognises that new models of care and support are emerging all the time, and embraces innovation and flexibility, unlike previous legislation that focused primarily on traditional models of residential and domiciliary care.

Wellbeing is described as:

- personal dignity including respect
- physical and mental health and emotional wellbeing
- protection from abuse and neglect
- control by the individual over day-to-day life (including over care and support provided and the way it is provided)
- participation in work, education, training or recreation
- social and economic wellbeing

- domestic, family and personal relationships
- suitability of living accommodation.

## 2. Assessment, including carers assessment

The assessment and eligibility process is the key interaction between the local authority and an individual. It should not just be seen as a gateway to care and support, but should be a critical intervention in its own right, which can help people to understand their situation and access support when they require it.

Local authorities must undertake an assessment for any adult, including a carer (see below), who appears to have any level of needs for care and support, irrespective of whether the local authority thinks the individual has eligible needs. The individual should be supported to participate as fully as possible in decisions, perhaps by family, friends or carer, or by an independent advocate if the local authority thinks the person has substantial difficulty in involvement and the person has no one else available to help them.

The purpose of assessment is to identify the needs and how these impact on the wellbeing and outcomes that an adult wishes to achieve in their day to day life.

Assessment must seek to establish the total extent of needs before eligibility is determined and the impact of those needs on the individual's wellbeing (day to day life).

Assessments may be carried out in different formats. Where appropriate, an assessment may be carried out over the phone or online, though a local authority must make sure it has fulfilled its duties around safeguarding,

independent advocacy, and assessing mental capacity, otherwise it must arrange a face-to-face assessment. An authority may also offer the person the opportunity to carry out a supported self-assessment.

Assessments can be carried out by a range of people from different backgrounds, including social workers, occupational therapists, and rehabilitation officers, as well as care managers or first contact staff. Anyone carrying out an assessment must be appropriately trained and have the necessary skills and be competent to do so. Local authorities should consider whether additional relevant expertise is required on a case-by-case basis, taking into account the nature of the needs of the individual, and the skills of those carrying out the assessment. An expert with relevant training must assess an adult who is deafblind.

### **Assessment of those who may lack capacity**

Where an individual lacks capacity, the local authority must carry out supported decision making, involving the person as far as possible. It must carry out a capacity assessment and take 'best interests' decisions.

In cases where a person refuses, a local authority is not required to carry out an assessment, unless it has established that the adult lacks mental capacity and that carrying out a needs assessment would be in their best interests. The authority must also carry out an assessment where it considers the person is or is at risk of being abused. The local authority must carry out an assessment if the person requests one at a later time.

Local authorities must consider all the adult's care and support needs, regardless of any support being provided by a carer. Any support from a carer must not be considered until after it has been determined that the adult has eligible needs. The local authority is not required to meet any needs which are being met by a carer who is willing and able to do so, but it should record where that is the case. This ensures that all of the adult's needs are identified and the local authority can respond

appropriately if the carer feels unable or unwilling to carry out some or all of the caring they were previously providing.

The requirements of the Mental Capacity Act and access to an Independent Mental Capacity Advocate apply for all those who may lack capacity.

### **Carer's assessment**

Local authorities should not assume that others are willing or able to take up caring roles. However, where an individual provides care for another adult, local authorities must carry out a carer's assessment if it appears that the carer may have any level of needs for support.

A carer's assessment must establish the carer's needs for support and how these impact on their wellbeing – as well as the sustainability of the caring role, including the practical and emotional support provided. It must consider the carer's future needs for care and support and their ability and willingness to provide care now and in the future.

A carer's assessment should be accompanied by information and advice specific to the carers' requirements.

## **3. National Eligibility Criteria**

The Care Act introduces a national eligibility threshold for adults with care and support needs which consists of three criteria, all of which must be met for a person's needs to be eligible. The eligibility threshold has been set at a level which is intended to allow local authorities to maintain their existing access to care and support.

It is based on identifying:

- whether a person's needs are due to a physical or mental impairment or illness
- to what extent a person's needs affect their ability to achieve two or more specified outcomes
- whether and to what extent these have a significant impact on their wellbeing.

The Eligibility Regulations set out a range of outcomes, and local authorities must consider whether the adult is unable to achieve two or more of these outcomes when making the eligibility determination - “being unable” to achieve an outcome includes any of the following circumstances, where the adult:

- is unable to achieve an outcome without assistance,
- is able to achieve it without assistance but doing so causes significant pain, distress or anxiety
- is able to achieve it without assistance but doing so endangers, or is likely to endanger the health and safety of the adult, or others
- is able to achieve it without assistance but takes significantly longer than would normally be expected.

The outcomes are:

- managing and maintaining nutrition
- maintaining personal hygiene
- managing toilet needs
- being appropriately clothed
- being able to make use of the adult’s home safely
- maintaining a habitable home environment
- developing and maintaining family and other personal relationships
- accessing and engaging in work, training, education or volunteering
- making use of necessary facilities or services in the local community including public transport, and recreational facilities or services, and
- carrying out any caring responsibilities for a child.

### **Meeting needs**

Where local authorities have determined that a person has eligible needs, they must agree with the adult which needs they would like the local authority to meet and consider how best to meet them.

Where the support options include services the local authority charges for, then the local authority must carry out a financial assessment.

Local authorities must establish whether the person meets the ordinary residence requirement in that they ordinarily live in the local authority’s area. In the case of the carer, the person for whom they care must be ordinarily resident in the authority’s area.

The local authority must produce a written record of their decision and the reasons for it.

Individuals can complain and challenge a decision and there will be a formal appeal system from 2016.

## **4. Care planning and review**

If the local authority has a duty to meet a person’s needs, it must help the person decide how their needs are to be met by preparing a care and support plan, or support plan for carers. The plan must describe what needs the person has and which needs the local authority is to meet.

The plan must consider any needs that are already being met, by a carer for instance. In addition, it must include a tailored package of information and advice on how to delay and/ or prevent the needs the local authority is not meeting.

Everybody will have a personal budget as part of their care and support plan that identifies the cost of their care and support and the amount the local authority will make available, regardless of their care setting.

Person-centred care and support planning means that a person can choose to receive part of, or their entire personal budget, as a direct payment, depending on how much control and responsibility they wish to take over the arrangement of their care and support. The local authority must inform the person which, if any, of their needs may be met by a direct payment and provide appropriate information and advice on how to use and manage this.

The content of their plan must be in a format that makes sense to the individual concerned and be finalised with them, and with any other people that person requests. Plans can be written using the first person 'I' to emphasise that the care and support plan is owned by the individual.

People should be allowed to choose – and source – their own innovative forms of care and support, including 'non-service' options, such as Information and Communication Technologies (ICT) equipment, club membership, and massage. Local authorities should avoid lists of allowable purchases or 'prescribed providers'.

An independent advocate may be appointed if a person has substantial difficulty being involved with the planning process. If a person may lack capacity to be involved, a suitably qualified professional needs to carry out a capacity assessment in relation to the specific decision to be made – though it is still important that the person is involved as far as possible in making decisions.

## **Review**

The Act specifies that plans must be kept under review and local authorities should establish systems to do this, including seeking cooperation with other health and care professionals who may be able to inform the authority of any concerns about the ability of the plan to meet needs.

The review should be person-centred and seen as a positive opportunity to take stock of outcomes and to consider if the plan is enabling the person to meet their needs and achieve their aspirations. The review could be a self-review, or carried out by a carer, a provider or another authorised professional, and then signed-off by the local authority.

It is expected that authorities should conduct a review no later than every 12 months, with an initial 'light-touch' review after 6-8 weeks.

Where circumstances have changed then it may be necessary to undertake a revision of the care plan, and if appropriate a needs assessment and financial assessment.

However, this should not be a new assessment from the beginning of the care and support process, but should be a proportionate assessment that takes into consideration what is already known of the person. In some cases a complete change of plan may be required, whereas in others only minor adjustments may be needed.

## **5. Deferred payments**

From April 2015, a new scheme will mean that people do not have to sell their homes in their lifetime to pay for residential care. Termed 'deferred payments', this arrangement must be offered by all local authorities to people who meet certain eligibility criteria governing the scheme. At a minimum, local authorities must allow those eligible to defer their 'core' care costs.

Local authorities are also encouraged to offer the scheme more widely to anyone they feel would benefit who does not fully meet the criteria.

By taking out a deferred payment agreement, a person can 'defer' or delay paying their care costs. A deferral can last until death, or as a 'bridging loan' to enable the person to choose when to sell their home. The local authority and the person who needs care will have a rough idea of likely care costs from the care planning process.

The local authority will pay the care costs on their behalf and will recover the money that the person owes (plus interest and an administration charge) at a later date. It should be stressed that the payment for care costs is deferred and not 'written off'. Local authorities will need to ensure that adequate security is in place to be confident of the person's ability to pay back the amount deferred in the future.

All local authorities must offer deferred payment agreements to people who have local authority-arranged care and support, and also people who arrange and pay for their own care, subject to certain criteria. Local authorities may also, at their discretion, enter into deferred payment agreements with

people whose care and support is provided in supported living accommodation provided they intend to retain their former home and pay the associated care and accommodation rental costs from their deferred payment.

The criteria governing eligibility for deferred payments are:

- The person's eligible needs are to be met by residential care
- The person has less than £23,500 in assets excluding the value of their home, and
- They own their own home outright and it is not occupied by a spouse or dependent relative.

Local authorities may refuse a deferred payment if any of these apply:

- They are unable to secure a charge on the property
- The property is uninsurable.

First party top-ups secured against their property are allowed within the deferred payments scheme.

Local authorities must provide information and advice about deferred payment schemes and about obtaining Enduring Power of Attorney or Lasting Power of Attorney in cases where a person may lack capacity to request a deferred payment, or may want to consider any potential issues around loss of capacity.

## 6. Funding reforms

### 2015/16

From April 2015 intermediate care for up to six weeks and reablement requiring minor aids and adaptations up to the value of £1,000 must continue to be arranged by the local authority free of charge – in line with NHS funded intermediate care.

Although such types of support will usually be provided as a preventative measure, they may also be provided as part of a package of care and support to meet eligible needs. Local authorities should consider continuing to provide intermediate or reablement services

free of charge beyond six weeks if they have clear preventative benefits to the individual and may well reduce the risk of hospital admissions.

An adult whose care is arranged through local authority contracts cannot be charged more than the cost to the local authority. However, under the Act, a self-funder can be charged the cost to the local authority. This is already the case for domiciliary care and it will be extended to care homes from April 2016. Local authorities may also charge an administration fee for self-funders to cover costs.

In addition, the Act cancels the Charging for Residential Accommodation Guidance (CRAG) and Fairer Charging Guidance, but there is little change in existing practice in 2015/16, hence the following do not change, except for annual uprating: DWP Benefits, Funded Nursing Care, and NHS Continuing Care. The upper capital limit remains at £23,250 for 2015/16.

Rules on the use of “top up fees” are re-enforced to make clear that all arrangements must be through the local authority. This means a provider must not seek a “top up fee” directly with the person receiving local authority funded care.

### 2016/17

From April 2016 the biggest funding reforms to care and support in over 65 years will be introduced that will protect people against catastrophic care costs, resulting in more people than ever contacting their local authority.

The key 2016/17 reforms will be:

- Extension of financial support provided by the local authority by raising the upper capital limit to £118,000 where someone is receiving care in a care home and their property is taken into account. This will mean that more people with modest assets are able to receive financial support to meet their eligible needs.
- Every person with assessed eligible needs will need to have a care account. This will keep track of the costs of care to meet their

eligible needs and what their progress is towards the cap. Local authorities will need to provide regular statements.

- A cap on the care costs which a person pays over their lifetime. This will be set at £72,000 for those over retirement age. For those who turn 18 with an eligible care need this will be set at zero and a different approach will be taken for working age adults. How a person progresses towards the cap will be based on what the cost of meeting their eligible needs is, or in the case of self-funders would be, to the local authority. Where a local authority is arranging a person's care, this will be set out in the personal budget. Where they are not, this will be set out in an independent personal budget.
- Everyone will remain responsible for their daily living costs, just as they would in their own home or if they did not have a care and support need. This is not meant to be a precise science, but is a notional contribution to ensure parity between settings. This should not impact how a local authority commissions.

# New areas for providers

## 7. Market shaping and commissioning

Local authorities are responsible for achieving a responsive, diverse and sustainable market of service providers that can provide high-quality, personalised care and support that best meets the needs of people, regardless of who pays for care.

Local authorities are expected to shape the market primarily through commissioning quality, outcomes-based services that focus on wellbeing and also through other interventions, for example, incentivising innovation by user-led or third sector providers, possibly through grant funding.

The approach means emphasising prevention, enablement, ways of reducing loneliness and social isolation, and promoting of independence as ways of achieving and exceeding desired outcomes, ensuring choice in how people's needs are met. Outcomes, therefore, should be used as a principal measure for quality assurance of services.

Local authorities must promote the efficient and effective operation of a sustainable market in services for meeting care and support needs and ensure that there is a meaningful choice of providers who, when taken together, provide a variety of services. This could be independent private providers, third sector, and voluntary and community based organisations, including user-led, mutual and small businesses.

A Market Position Statement should encourage dialogue and understanding between local authorities, stakeholders and providers; it should signal the local authority's direction of travel and policy intent, and contain information on needs, demand and trends.

Local authorities are expected to understand the business challenges faced by providers, although they are not required to collect detailed financial metrics, accounts and business plans in order to understand current trading conditions.

They must also make sure that people in their area have a variety of high quality services to choose from. Providers might achieve the delivery of high quality, appropriately resourced care and support services through staff remuneration and fair employee contracting terms, so as to retain an effective workforce and at least comply with employment legislation including payment of at least the national minimum wage.

Local authorities must have regard to the sustainability of the market as a whole including, for example, taking care not to set fee levels below an amount which is not sustainable for providers in the long-term.

## 8. Managing provider failure and service interruptions

Local authorities have a temporary duty to ensure needs are met where any business has failed, resulting in a service not carrying on. This duty does not apply where an administrator, or other person, continues to run the service. Most business failures are managed responsibly and do not impact on people's wellbeing.

The duty on local authorities applies whether or not the authority has contracts with that provider, and irrespective of whether the people affected are self-funders. It applies to all providers, not just those covered by the CQC oversight regime (see below). The duty

is to ensure needs are met which might range from providing information on alternative providers, to arranging care and support itself. However, where the failed provider's clientele consists of people in receipt of NHS Continuing Healthcare, the duty to meet needs falls on the NHS, not the local authority.

Local authorities also have powers to meet needs if a service is interrupted for any other reason, providing those needs are judged to be urgent by the authority.

## 9. Market oversight

Most service interruptions will be small scale and, therefore, easily managed by a local authority. However, service interruptions resulting from the failure of certain providers may be much more difficult to address, and therefore require national oversight.

From April 2015, the Care Quality Commission (CQC) will monitor the financial sustainability of the most difficult to replace care and support providers, as defined by The Care and Support (Market Oversight Criteria) Regulations 2014. The criteria that must be satisfied to fall within this regime are different for residential (eg nursing care) and non-residential care (eg personal care at home) providers. The criteria that non-residential care providers must satisfy are as follows:

- Deliver more than 30,000 hours or more care in a week, or deliver care to 2,000 or more people in a week, or deliver care to 800 or more people in a week and they each receive more than 30 hours care from that provider in the same week.

The criteria that residential care providers must satisfy are as follows:

- Bed capacity of 2,000 beds or more, or bed capacity of between 1,000 and 2,000 beds and either they have beds in 16 or more local authority areas, or the bed capacity in each of three or more local authority areas exceeds 10% of the total bed capacity of those local authority areas.

In addition, the Care Act allows regulations to be made specifying providers to be included in the market oversight regime regardless of whether they meet the entry criteria set out above. One such instance where this may be used is to allow for providers to be included by virtue of the specialist nature of the service they provide. There are no objective criteria for defining which specialist providers might be included in the regime. Decisions will be taken by the Secretary of State.

There are also provisions for the Secretary of State to exclude a provider from CQC's oversight regime irrespective of whether it meets the entry criteria.

Large scale interruptions pose far greater problems, and local authorities should have contingency planning arrangements in place with neighbouring authorities and with providers, particularly where an authority has a substantial number of people placed within its area by other authorities.

The CQC has a duty to assess sustainability and inform local authorities when it considers a provider is likely to be unable to continue to provide the service for which it is registered because of business failure. This is to provide local authorities with early warning of likely failure so they can prepare to step in if needed.

## 10. Statutory Safeguarding

Local authorities and other organisations now have statutory safeguarding duties that apply equally to all adults with care and support needs, regardless of whether those needs are being met, regardless of whether the adult lacks mental capacity or not, and regardless of setting, other than prisons and approved premises.

Guided by six key safeguarding principles - empowerment, prevention, proportionality, protection, partnership and accountability - organisations must promote the adult's wellbeing in their safeguarding arrangements and establish what being 'safe' means to them, and how that can be best achieved. Safeguarding should be person-led and

outcome-focused, thus empowering people to make choices and have control over their lives.

Local authorities must make enquiries where they believe an adult is experiencing, or is at risk of, abuse or neglect, and must take proportionate and least intrusive steps to prevent or stop it and to address the cause. If needed, an independent advocate should be arranged to represent and support an adult who is the subject of a safeguarding enquiry or Safeguarding Adult Review (SAR).

Local authorities must actively encourage co-operation and accountability between themselves and their relevant partners, making sure everybody is clear about their roles and responsibilities.

- Commissioners should foster a positive learning environment as the best way to understand and respond to safeguarding concerns deriving from poor service provision. There should be an open culture around safeguarding, working in partnership with providers to ensure the best outcome for the adult. When commissioning services, local authorities should ensure that providers have clear policies and procedures in place to prevent abuse or neglect and are capable and competent in recording and responding to allegations.

Local authorities should act to raise public awareness so that communities as a whole, alongside professionals, play their part in protecting adults: preventing, identifying and responding to abuse and neglect. In addition, they should enable access to mainstream community resources such as leisure facilities, safe town centres and community groups in order to help reduce the social and physical isolation that plays its part in abuse and neglect.

### **Safeguarding Adult Boards**

Each local authority must lead a Safeguarding Adults Board (SAB) to oversee safeguarding across its locality.

Besides the local authority, membership must include NHS Clinical Commissioning Group(s) and chief officer of police for that area, but

may also include others, e.g. ambulance and fire services, providers of health and social care, Healthwatch, CQC, and the prison service.

It is important that SAB partners work together and feel able to challenge each other, and other organisations, where they believe actions or inactions are increasing the risk of abuse or neglect.

All service providers, including housing and housing support providers, should have clear operational policies and procedures that reflect the framework set by the SAB.

A SAB has three core duties:

- It must involve the local community and Healthwatch in establishing a strategic plan for each financial year, setting out how it will meet its main objective on how it will help adults in its area and what actions each member of the SAB will take to deliver the plan
- It must publish an annual report, detailing what the SAB has done during the year to achieve its main objective, and what each member has done to implement the strategy, as well as detailing the findings of any Safeguarding Adults Reviews (SAR) and subsequent action. The annual report should help to raise community awareness of adult abuse and neglect and should include feedback from all agencies, including providers, as well as individuals who have experienced the process, and should reflect how well agencies are collaborating.
- It must conduct a Safeguarding Adults Review when an adult in its area dies, or is at risk of dying or of serious harm, as a result of known or suspected abuse or neglect, and there is concern that partner agencies could have worked more effectively to protect the adult. The SAR report must analyse what happened and the actions taken, and contain findings of practical value to organisations and professionals.

### **Provider implications:**

Policies and procedures for providers should reflect statutory guidance, which suggests

nine areas to include (see statutory guidance 14.41). The document should include those circumstances where providers need to report outside their own chain of line management, including outside their organisation to the local authority. Providers will need to share information with relevant partners such as the local authority even where they are taking action themselves. The local authority should inform providers of any allegation against them or their staff.

## 11. Information and Advice and Guidance (IAG services)

Local authorities must establish and maintain a universal information and advice service on care and support, available to its whole population, not just those already known to the system.

Information must be clear and accessible for all and must explain the care and support system locally, how it works, and how to access services, and the choices available.

It should support public knowledge and awareness of different types of abuse and neglect, how people can keep themselves and others physically, sexually, financially and emotionally safe, and how to raise concerns.

The service must include financial information and advice relevant to care and support, including understanding care charges, managing money and ways to pay, and the cap on care costs. Where appropriate, it should signpost people to independent financial advice – but must make clear whether this is free or may be charged for.

Information and advice must be accessible from a wide variety of sources - not just the internet and leaflets but face-to-face meetings, use of peer-to-peer contacts, telephone, and use of wide media such as newspapers and local radio.

The duty does not require local authorities to provide all elements of this service, but to make effective use of other high quality statutory, voluntary and/or private sector

information and advice resources available nationally and locally.

This duty to provide information and advice is distinct from the duty to meet eligible needs, which may be met by information and advice but may be more personalised following a needs or carers assessment.

## 12. Duty of candour

The duty of candour requires all health and adult social care providers registered with CQC to be open with people when things go wrong. The regulations impose a specific and detailed duty of candour on all providers where any harm to a service user from their care or treatment is above a certain harm-threshold.

The duty of candour is a legal requirement and CQC will be able to take enforcement action when it finds breaches. The duty requires providers to offer an apology and state what further action the provider intends to take in this situation.

# New opportunities

## 13. Prevention, including intermediate care

### Prevention

Local authorities' responsibilities for prevention apply to all adults, including people who do not have any current needs for care and support, and adults who do have needs but may not be eligible, including carers.

Local authorities may choose to provide some types of preventative support themselves, or provide them in partnership with other local providers e.g. rehabilitation or falls clinics provided jointly with the local NHS

Primary prevention involves promoting wellbeing through universal access to good quality information, support for safer neighbourhoods, promoting healthy and active lifestyles, or reducing isolation.

Secondary prevention involves early intervention such as referrals to falls prevention clinics or providing greater assistance to those at risk of falls, such as through minor adaptations to housing or telecare services.

Tertiary prevention involves minimising the effect of disability and maximising independence through intermediate care. Aimed mainly at older people, intermediate care consists of:

- home-based or bed-based intermediate care, provided for a limited period of time, to assist people in maintaining or regaining the ability to live independently
- rehabilitation - to assist a person to regain or re-learn some capabilities lost due to illness or disease

- reablement services - services provided in the person's own home to help them live independently.

Local authorities should encourage providers to be innovative and responsive in developing interventions that contribute to preventing and reducing needs for care and support and in identifying unmet needs. Local authorities should coordinate shared approaches and work with providers who have local insight into changing or emerging needs beyond eligibility for publicly-funded care.

## 14. Independent Advocacy

The Care Act extends the range of situations and people who are eligible for independent advocacy.

Local authorities must arrange an independent advocate for any person, who would experience substantial difficulty in being involved in their care and support assessment, care planning or review or safeguarding enquiry / review, and there is no appropriate person (no family member, or friend) to support their involvement and represent them.

Advocacy under the Care Act has a focus on supporting the person to be involved in the care and support 'process'. It means supporting a person to understand information, express their needs and wishes, secure their rights, represent their interests, and obtain the care and support they need, regardless of the setting.

The Care Act defines four areas, any one of which may result in substantial difficulty in being involved:

- understanding relevant information

- retaining information
- using or weighing up the information
- communicating views, wishes and feelings

All local authorities must ensure that there is sufficient provision of independent advocacy to meet their duties under the Care Act.

Many people who qualify for advocacy under the Care Act will also qualify for advocacy under the Mental Capacity Act 2005. The same advocate could provide support under both Acts.

The 3rd edition of the Advocacy Quality Performance Mark (QPM), published in April 2014 by the National Development Team for Inclusion (NDTi) is a tool for providers of independent advocacy to show their commitment and ability to provide high quality advocacy services and work alongside the Advocacy Code of Practice, which enables advocacy providers to demonstrate how they are meeting the standards set out in the code. [www.qualityadvocacy.org.uk](http://www.qualityadvocacy.org.uk)

## 15. Personal budgets and direct payments

### Personal budgets

Independent research shows that, where implemented well, personal budgets can improve outcomes and deliver better value for money. The Act enshrines personal budgets into law for the first time, making them the norm for people with care and support needs. Moreover, it makes clear that decisions about personal budget allocations and direct payments should not be made purely on financial grounds, but on outcomes and value for money.

Everyone whose needs are met by the local authority, whether eligible needs, or other needs the authority has chosen to meet, must receive a personal budget as part of their care and support plan, or support plan, following assessment. This also applies to carers.

Having a personal budget will make clear to the person how much money is available

to meet their needs and give them greater choice and control over how that budget is used to purchase care and support and who is involved, including family and friends.

The person will know how much the local authority will pay, and how much they will pay themselves – and how that is calculated. They will be able to manage the money themselves through a direct payment, or can appoint the local authority or a third party, often called an individual service fund (ISF), to manage it for them. Where an ISF type arrangement is not available locally, the local authority should consider developing this service with specified providers.

### Direct payments

Local authorities should provide people with information on direct payments - making clear what they are, how they work and how to request one – and where to go for further information.

Local authorities should take care to explain the responsibilities involved in managing a direct payment and being an employer, and in making arrangements with social care providers. They should also consider how people could increase their choice, for example, by pooling budgets of people living in the same household, such as an adult and carer, or pooling budgets of people within a community with similar care and support needs, or aspirations. Developing networks of 'budget poolers' could help create dynamic groups of people working together to meet needs using, for example, web-based systems such as e-Marketplaces to search for services and to consider joint purchases with others. People could also opt for a mixed package of direct payments and other forms of support or arrangements.

## 16. Integration, cooperation and partnerships

The Care Act now makes integration, cooperation and partnership a legal requirement on local authorities and on all agencies involved in public care, including

the NHS, independent or private sector organisations, housing, and the Care Quality Commission (CQC).

New services are likely to emerge from health and social care organisations working together to provide services and information that underpin wellbeing and provide more person-centred services, tailored to people's needs and preferences.

Integration and cooperation with partners should enable earlier intervention - the best way to prevent, reduce or delay needs for care and support - and safeguard adults at risk from abuse or neglect.

It should improve housing, a crucial health-related service, by integrating accommodation needs with care and support needs - whether that be in a general dwelling, an adult placement or specialist housing.

Integration and cooperation will mean sharing information and cutting duplication – doing away with situations where people are asked for the same information from a variety of professionals.

It will make a person's pathway through the care system clearer and easier to navigate.

It also recognises carers as significant providers of care or as partners in a range of provision and hence their offer needs to be integrated with that of others.

The following are some of the ways local authorities could promote greater integration and cooperation:

- Joint Strategic Needs Assessment (JSNA) - using their own care and support data and public health data to understand and profile the needs of the local population.
- Joint Health and Wellbeing Strategies and commissioning strategies - to promote wellbeing, prevent and/or delay need and improve the quality of care.
- Local Development Plans – to include an understanding of the housing and support needs of older and vulnerable people.

- Joint commissioning teams - supported through sharing resources and joining up local authority and NHS commissioning capacity.

Pooled budgets between health and social care to help minimise overlap/gaps in service delivery, increase efficiency, improve value for money and ensure that services are designed to meet the needs of service users.

Develop combined approaches to the market through joint market position statements between local authorities and the NHS.

Health and Wellbeing Boards – establishing formal integrated governance structures around the commissioning process

To reinforce the focus on joint working at a local level, the NHS is no longer obliged to seek reimbursement for those delayed discharges from hospital recorded as being attributable to the local authority not having care and support in place. The aim is for health and social care to work together to reduce those delays, with reimbursement asked for by the NHS as a last resort.

## 17. Smoothing the transition from children's to adults' services

The duty to conduct a transition assessment applies when a young person is likely to have needs for care and support (or support as a young carer) when they or the person they care for transitions to the adult system.

It should be timed at a point where it is of 'significant benefit', taking into account what is going on in their lives, e.g. school, work and family issues and cause minimum disruption.

The wellbeing of each young person or carer must be taken into account so that assessment and planning is based around individual needs, wishes, and desired outcomes, making sure that they receive continuity of care.

Professionals from different agencies, families, friends and the wider community should work together in a coordinated manner around

each young person or carer to help raise their aspirations and achieve the outcomes that matter to them.

## 18. Ordinary residence

Local authorities' responsibility for meeting a person's eligible needs under the Care Act is based on the concept of 'ordinary residence' – where a person with mental capacity has voluntarily settled, whether for a long or short period. There is no minimum period in which a person has to be living in a particular place for them to be considered ordinarily resident there.

However, determining ordinary residence is not always clear cut, for example when people spend their time in more than one area, or move between areas. Sometimes the line between 'visiting' or 'living with' friends or relatives can become blurred. Local authorities need to look at each case on merit, taking into account factors like time, intention and continuity when determining ordinary residence.

If a person lacks capacity to decide where to live, a best interests decision about their accommodation should be made under the Mental Capacity Act 2005.

In the case of children moving to adult care, ordinary residence will normally remain in the area where their parents live, or in the local authority that had responsibility for them as a child.

## 19. Delegation of functions

The Care Act enables local authorities to delegate some of their functions relating to care and support, although responsibility remains with them.

Delegating functions may be desirable where, for example, the local authority does not have in-house expertise or the necessary capacity.

This power should give local authorities flexibility in delivering local approaches to care and support, and allow local authorities

to work more efficiently and innovatively, providing better quality care and support to local populations.

As with all care and support, individual wellbeing should be central to any decision to delegate a function – rather than to gain efficiency where this is to the detriment of wellbeing.

Local authorities cannot delegate their responsibility to cooperate and integrate with local partners, or their adult safeguarding duties, including establishing Adult Safeguarding Boards, or local policies relating to what can and cannot be charged for. However they can use outside expertise to assist them in discharging those functions – taking care to avoid any possible conflict of interest.

## 20. Documents repealed

The Care Act 2014 follows a Law Commission review of the legislative base and a report by Andrew Dilnot on the funding of social care, both commissioned by the coalition government in 2010. The White Paper Caring for our future – reforming care and support was published in July 2012 and the Care Act received Royal Assent in early 2014.

The Care Act repeals or replaces a number of documents, including:

- National Assistance Act 1948
- Chronically Sick and Disabled Persons Act 1970
- NHS and Community Care Act 1990
- Choice of Accommodation Directions 1992
- Delayed Discharges Regulations 2003
- NHS Continuing Healthcare (Responsibilities) Directions 2009
- Charging for Residential Accommodation Guidance (CRAG) 2014
- Transforming Adult Social Care (LAC(2009)1)
- Fair Access to Care Services (FACS) guidance on eligibility criteria

- No secrets: guidance to protect vulnerable adults from abuse

## 21. Links to further information

### **The Care Act 2014**

<http://www.legislation.gov.uk/ukpga/2014/23/contents>

### **Care and Support Statutory Guidance (October 2014)**

<https://www.gov.uk/government/publications/care-act-2014-statutory-guidance-for-implementation>

### **Final Affirmative Regulations Under Part 1 of the Care Act**

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/366048/43738\\_2902999\\_Regs\\_Affirmative\\_Accessible.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/366048/43738_2902999_Regs_Affirmative_Accessible.pdf)

### **Final Negative Regulations Under Part 1 of the Care Act**

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/366056/Care\\_Act\\_Negative\\_Regulations\\_.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/366056/Care_Act_Negative_Regulations_.pdf)



Local Government Association  
Local Government House  
Smith Square  
London SW1P 3HZ

Telephone 020 7664 3000  
Fax 020 7664 3030  
Email [info@local.gov.uk](mailto:info@local.gov.uk)  
[www.local.gov.uk](http://www.local.gov.uk)

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