



## **An Overview of the Care Act 2014**

### **Support & Wellbeing Information Service Harrow (SWiSH)**

The Care Act 2014 represents the most comprehensive overhaul of the social care system since 1948 and enacting some of the biggest changes to the framework of social care in over a generation.

The Care Act 2014 contains over a hundred amendments to social care legislation, which aim to put people first by building the system around their personal needs. It also will help people make better informed choices about the kind of social care they need and receive.

Below, we outline the most significant changes brought in by the Care Act 2014 from April 2015, which will have a profound impact on how local authorities and care-providers provide social care in the future.

#### **The right to Information and Advice**

Local authorities must provide an Information and Advice service that is accessible to everyone in the local population and not just service users. The information and advice provided must be "...accessible to, and proportionate to the needs of, those for whom it is being provided" and must include types of care and support and how to access them. Independent financial advice is also of particular importance, so local authorities must ensure that they enable people to access independent financial advisors to help them get to grips with the complexities of financing social care.

#### **The right to 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.

### **Carers' rights**

Wellbeing is now included in the law. For the first time, carers will be recognized in the law in the same way as those they care for. A carer is someone (non-professional) who helps another person - usually a friend or relative - in their day to day life. The Care Act now gives carers a legal right to be assessed for local authority support, something which they previously did not have. Once assessed, the Local Authority will use similar eligibility criteria as used for people receiving care to decide whether the carer is entitled to support. Usually, if eligible, this support is provided for free, in recognition of the valuable contribution made by carers. But sometimes, a financial assessment may be carried out to see if the carer should be charged for any support provided. If supporting the carer means providing care to the person they look after, then the person they look after would need to have a financial assessment. Whether to charge carers for support provided to them personally is at the local authority's discretion.

### **Cap on care costs**

The new capped system will put a maximum limit on total care costs of £72,000, for those judged as 'eligible' under the Care Act, which will help those with serious needs and avoid catastrophic care costs if they have limited to modest wealth. The cap introduces a measure of protection that wasn't there before, preventing people from losing lifelong savings to pay for their care. However, the cap is not without its omissions. For example, it does not include living costs (e.g. board and lodgings in care homes, or any top-ups or extras). It also does not allow for people to be refunded for monies paid before April 2016. Those who pay for care for needs not considered 'eligible' under the Care Act will have no cap on their care costs.



## Eligibility Criteria

The Act says that people will be entitled to have their needs met when:

- Their needs fit the 'eligibility criteria' (see below)
- They are ordinarily resident in that Local Authority
- Any of the following five situations apply to them:
  - the type of care and support they need is available free of charge
  - 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 person does not have mental capacity, and has no one else to arrange care for them
  - when the cap on care costs comes into force (in April 2016), their total care and support costs have exceeded the cap

### The 'eligibility criteria' are as follows:

The person must have needs as a result of a physical or mental disability or illness. The disability or illness must result in them being unable to achieve one or more of the following outcomes:

- Being able to carry out 'some or all' basic activities (see below for explanation of what these are)
- Maintaining family or personal relationships
- Working, volunteering or taking part in training or education
- Accessing community services or facilities (including for leisure and having fun)
- Caring for a child

The 'basic activities' mentioned above are:

- a) Eating, drinking and preparing meals
- b) Personal hygiene – i.e. washing
- c) Going to the toilet
- d) Getting up and dressed
- e) Getting around the home
- f) Cleaning and maintaining the home

The Care Act has therefore introduced the same eligibility threshold across the country, unlike the current system where local authorities decide the threshold themselves, which means eligibility levels across post codes can vary. Under the new Care Act, the national eligibility criteria will be roughly equivalent to the current 'substantial' level of need as defined by local authorities. This means that the 13% of local authorities who currently provide services to people with needs judged 'moderate' rather than 'substantial' will no longer be able to provide services to these people. Bear in mind that needing help with only one or two of the 'basic activities'



described above will not be enough to ensure eligibility, even though not being able to one of these activities could have a serious impact on someone's life.

### **A basic Human Right:**

People receiving publicly funded or publicly arranged (even if privately funded) care are now protected by the Human Rights Act. This means they can argue that substandard care has breached their human rights and they will have their human rights protected by the law in such a situation. However, this protection is not afforded to people who self-fund and privately arrange their own care.

### **Prevention rather than crisis-management:**

New social care legislation focuses on prevention rather than crisis management. Local authorities have been given new duties under the Care Act to provide preventative services to maintain the health of service users rather than dealing with people after they have had an emergency or reached a crisis point. Local authorities will need to provide services that will prevent peoples' care needs from deteriorating - this is why the provision of Information and Advice is so important, as it can empower people to make informed and considered decisions about the care and support they need before hitting a crisis. Information and advice provision will need to include information on health conditions and management of long term conditions, as well as on social care provision.

### **Personal Budgets and Support Plans:**

For the first time, local authorities have a legal duty to provide a personalised care and support plan (or a support plan for carers) - something which was previously only set out in guidance, not in law.

People will also have a legal right to receive a personal budget (unless they are in receipt of a re-ablement service to get them back to self-management after a crisis). This personal budget can be used by service users or carers to request a direct payment, giving them the money they need to arrange their own care, if they should want to do this. However, personal budgets paid by Councils to people considered 'eligible' under the Act will only cover the cost that the Council would pay if they were sourcing the care themselves (despite the fact that Councils pay lower rates than individuals sourcing their own care, as they are able to 'block-fill' places) - this could be seen as unfair. People may have to pay top-up fees themselves, to redress the balance if necessary.

### **Higher means testing threshold:**

Under the current law, only people with less than £23,250 in assets and low incomes receive help from the State with their care and support costs. The changes will mean



that, from April 2017, people with around £123,000 worth of assets (savings or property), or less, will start to receive financial support if they need to go to a care home. The amount that the Government will pay towards someone's care and support costs will depend on what assets a person has.

### **Increased help and protection for people who wish to move areas:**

The Care Act sets out in law a clear process for local authorities to follow if a person in receipt of care wishes to move to another area. Currently, people say they are afraid to move as they cannot be sure of receiving appropriate care in a new area.

### **Market Oversight and Provider Failure:**

Local authorities will, under the new Care Act, have increased responsibilities for checking on care providers in their area. Even if a care provider fails or goes bust, the local authority will have a duty to ensure that people's care needs are met seamlessly and not disrupted. The Care Quality Commission (CQC), which independently regulates all care providers in England, will have to assess which care providers would be 'hard to replace' should they go bust or fail. The CQC can request information from care providers about their financial sustainability, in order to spot potential problems earlier. Additionally, performance ratings and tables will be published for all the different care providers in England, so people can have more information about the different providers in their area.



*The Support and Wellbeing Information Service Harrow (SWiSH), a consortium of five local charities, offers an Information and Advice Service for Harrow residents, funded by Harrow Council.*

[www.harrowca.org.uk](http://www.harrowca.org.uk)