

# The Care Act

## Shropshire

### Compact Briefing



# Shropshire Compact

#### What is the Care Act?

The Care Act consolidates over a dozen pieces of social care legislation into a single law and represents the most significant change to adult social care in over 60 years. The Care Act received Royal Assent on 14 May 2014. The majority of the changes contained within the Act are set to take place from April 2015 (with the reform of funding, including the cap on care costs, to take effect from April 2016). The Care Act is described by the Government as:

*“An Act to make provision to reform the law relating to care and support for adults and the law relating to support for carers; to make provision about safeguarding adults from abuse or neglect; to make provision about Safeguarding adults from abuse or neglect; to make provision about care standards; to establish and make provision about Health Education England; to establish and make provision about the Health Research Authority; to make provision about integrating care and support with health services; and for connected purposes.”*

The Care Act is designed to be person-centred, placing the wellbeing of the individual at the core of social care. Changes are designed to help people make better informed choices about the kind of social care they need and receive. The Care Act aims to reduce inequality and bring the law up to date. It highlights the importance of greater integration and cooperation between agencies, and aims to rebalance the focus of social care on preventing and delaying needs rather than intervening at the point of crisis.

#### Care Act aims and objectives

The purpose of the Care Act is to develop:

- A simpler care and support system which focusses on individual needs and outcomes.
- Greater clarity on what people can expect and be entitled to.
- Easily accessible information and advice about care and support.
- A person-centred system which is built around the needs of individuals.
- A more co-ordinated whole-family approach, with better integration between adults and children’s services and improved transition for young adults.
- Support to help people maintain their independence and take control of their care and support.
- Greater support for carers and the right to an assessment.
- A greater choice of quality services.

Part 4 of the Act relates to the Better Care Fund (see separate Compact Briefing Sheet for more information).

#### Who does the Act Apply to?

The Act applies to Local Authorities but is relevant to a much larger audience including health bodies and the Voluntary, Community and Social Enterprise (VCSE) sector. Throughout the Care Act it is highlighted that local authorities must promote wellbeing when carrying out any of their care and support functions in respect of a person. This is sometimes called the well-being principle. The definition of well-being includes:

- personal dignity (including treatment of the individual with 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;
- the individual's contribution to society.

### **What are the main changes included in the Care Act?**

Significant changes include:

- General responsibilities on local authorities including **promoting people's wellbeing, focusing on prevention** and **providing information and advice**.
- The introduction of a consistent, **national eligibility criteria**.
- New rights to **support for carers**, on an equivalent basis to the people they care for.
- A national **minimum eligibility threshold**.
- Legal right to a personal budget and direct payment.
- Changes to **deferred payment agreements**.
- The extension of local authority adult social care responsibility to include prisons.
- New responsibilities around transition, supporting people who move between local authority areas and safeguarding.
- New duties of **market shaping**.
- Major reforms to the way that social care is funded will be effective from April 2016, including:
  - Changes to **financial means testing**.
  - Introduction of the **care cap** and **care accounts**.

These changes are described in a little more detail below:

#### **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.

#### **Carers support and rights**

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. Whether to charge carers for support provided to them personally is at the local authority's discretion.

#### **Human Rights**

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.

## **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 reablement 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.

## **Eligibility Criteria**

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

- They are ordinarily resident in that Local Authority.
- Their needs fit the eligibility criteria.
- 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. Basic activities 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
  - 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.

## **Minimum eligibility threshold**

Currently local authorities choose the level they set their social care eligibility criteria at. Most authorities set this at "critical and substantial" needs. The Care Act makes provision for this system to be replaced with a standard national eligibility threshold in order to promote equality of service. Guidance indicates this will be set at a level equivalent to the existing "substantial and critical" levels.

## **Care cap**

The cap introduces a measure of protection that wasn't there before, preventing people from losing lifelong savings to pay for their care. No adult will have to spend more than £72k on

meeting their assessed eligible needs. Once the cap is reached, the council will pay for their care and support. Some important details of the cap are:

- The cost is based on what the local authority would pay to meet assessed eligible needs.
- If the care and support needs are funded by a combination of local authority and the person's own contribution, the total cost counts towards the cap.
- For most adults in residential care, "hotel costs" are excluded (e.g. food, utility bills etc.). This is so that those receiving care at home are not unfairly treated (as they would still be paying these costs). Adults in residential care will continue to pay their "hotel costs" after the £72k limit is reached; this is likely to be set at £12k per annum.

The most significant implication of the cap is that it incentivises self-funders to approach the council for assessment, thus increasing demand on social care assessment functions. National analysis and modelling of how the cap will operate indicates that many individuals will not reach the £72k in their lifetime. The cap 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.

### **Care account**

For every individual with assessed eligible needs, the council will hold a care account which shows the total accrued costs towards that individual's care cap. The council will need to monitor and review this account as well as provide annual individual account summaries.

### **Deferred Payment Agreement**

People entering residential care will have a new legal right to defer paying for their care costs, meaning they will not have to sell their home during their lifetime. The council will pay the care costs during this time and then reclaim the costs incurred on the sale of the property after the person has died. The council will be able to charge administration and interest payments and secure the debt by placing a legal charge against the asset. The Care Act makes it a duty for all councils to provide a deferred payment scheme.

### **Financial means testing**

Following assessment, if an adult has eligible care and support needs they are then offered a financial assessment to determine how much financial support from the local authority they are eligible for. For adults receiving care and support at home or in the community, those with assets over £23,250 (excluding the value of their home) are not entitled to any financial support. Through the Care Act it is proposed this limit be raised to £27,000. The Care Act also proposes that those in residential care with assets over £118,000 (including the value of their home) will not be eligible for financial support.

### **Market shaping and Provider Failure**

Local Authorities have a role in market shaping and are expected to ensure there is an efficient and effective market of high quality and sustainable care and support services from which people can choose. Local authorities will have increased responsibilities for checking on care providers in their area. 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.

### 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.

### Data Sharing and Integration

There will be closer working and integration of Health, Social Care and Voluntary Sector services, via a pooled pot of money drawn from various existing budgets called the Better Care Fund (see Shropshire Compact briefing on the Better Care Fund). It is envisaged that people's NHS number will be the piece of data that links their records across all services and sectors.

### The Care Act and the Voluntary Sector

The Care Act has many implications for the Voluntary Sector but a few issues are summarised below:

- The voluntary sector is a main provider of information and advice so the new duties on Local Authorities will be of interest to many within the VCSE sector.
- In a similar way to the provision of information and advice, the VCSE sector is a provider of support services for carers. The Care Act will have implications for the commissioning of carers services and VCSE organisations will have an important role to play in supporting carers to understand legislative changes.
- The Better Care Fund should alter the distribution of funds and may bring opportunities for the VCSE sector in the longer term as more emphasis is placed on the provision of preventative services.
- Closer working across sectors could bring many opportunities, particularly through improved information sharing.
- There may be opportunities for the Voluntary Sector in carrying out some functions previously provided by local authorities such as assessment for eligibility for care and financial assessments. However more work is required to better understand what those opportunities may look like and whether or not they will be achievable.
- New ways of working could have implications for service users' perception of the voluntary sector. The VCSE will need to understand how its independence and impartiality is maintained.

### How do I find out more?

For information about the Care Act in Shropshire visit:

<http://www.shropshire.gov.uk/adult-social-care/the-care-act/>

For other sources of information about the Care Act visit:

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

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/317822/Care\\_Act\\_easyread.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/317822/Care_Act_easyread.pdf)

<https://www.gov.uk/government/publications/care-act-2014-part-1-factsheets>

### The Shropshire Compact

For more information about the Shropshire Compact use the details below:

 **Website:** <http://vcsvoice.org/the-compact/>

 **Email:** [VCSAssembly@shropshire.gov.uk](mailto:VCSAssembly@shropshire.gov.uk)  **Telephone:** 01743 252740

