A ROUGH GUIDE TO THE CARE ACT 2014

1. INTRODUCTION

'"The Care Act has created a single, modern law that makes it clear what kind of care people should expect."

Rt. Hon. Norman Lamb, Minister of State for Car and Support

The Care Act received Royal Assent on 14th May 2014 and transforms the social care landscape. It is the biggest change to social care law for over 60 years replacing more than 30 pre-existing statutes plus numerous sets of guidance and regulations with a single new law fit for the 21st century.

This rough guide doe not pretend to be a comprehensive account of the Care Act. It has the more limited objective of providing a quick overview of the Act. This is done in terms of responses to a series of questions concerning the case for reforming the social care law, the underlying purpose of the Act and its structure followed by consideration of the Act's structure, its guiding principle and a description and some of the main changes it will bring about. This rough guide concludes by describing Haringey's approach to implementing the Act.

For fact sheets about the Act's content visit:

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

For information about statutory guidance and regulations:

https://www.gov.uk/government/consultations/updating-our-care-and-support-system-draft-regulations-and-guidance

Also see:

http://www.lukeclements.co.uk/care-act-2014-updated-overview/

2. WHY REFORM THE LAW? THE CASE FOR CHANGE

2.1 The State of the Law

In 2011 the Law Commission published a comprehensive review of the social care law for adults. It was highly critical finding that:

- the existing legal framework led to the provision of care and support services that often failed to live up to the expectations of the people who depended on them;
- the piecemeal development of legal underpinnings of adult social care meant that the users of services were often confused about their rights and local authorities were not clear about their responsibilities, and;
- the existing law was narrow and paternalistic. It was built around the provision of State defined services which people were expected to fit into rather than services that responded to the needs and goals of individuals. That is, the law failed to provide a legal basis for personalised care and support that wrapped services around the individual and over which they could exercise genuine choice and control.

2.2 An Ageing Population

The population is growing and ageing meaning that over the next 20 years and extra 1.4 million people, aged 65 years and over, will require care and support. This has enormous resource implications which threaten to overwhelm health and social care unless different ways of providing these important services are found. The Care Act is a main plank in efforts to solve this problem by placing emphasis on:

- preventing dependency;
- promoting independence;
- integration of Council services and between health and social care, and;
- building the capacity of communities to care for themselves.

2.3 The Scandal of the Mid-Staff Health Trust

On 9 June 2010 the Secretary of State for Health announced a full public inquiry, chaired by Robert Francis QC, into the role of the commissioning, supervisory and regulatory bodies in the monitoring of Mid-Staffordshire Foundation NHS Trust. This followed concerns about poor care and high mortality rates amongst patients at the Stafford Hospital run by the Mid-Staffordshire Health Foundation Trust in the late 2000s. When published, the Francis Report was scathing. It was hugely critical of ward staff, hospital managers, GPs, commissioners, the Care Quality Commission (CQC), the strategic health authority and Department of Health. In part, the Care Act is a direct response to the Francis Report. It contains measures that tighten-up the approach taken by the regulation and inspection of services, across health and social care and introduces a new criminal offence, carrying a two year prison sentence, with respect to the misrepresentation of a services performance.

2.4 Provider Failure

The final part of the case for change consists of the need to ensure that vulnerable people are not placed at risk because of provider failure. The gap in appropriate safeguards in this regard was starkly demonstrated by the financial failure of Southern Cross Health Care, the largest care home provider in the country. As a result of its bankruptcy thousands of vulnerable older people faced the prospect finding themselves homeless. Fortunately, this was avoided, but this episode made clear that there was an urgent need to improve market oversight and to ensure that individuals receive continuity of care in all circumstances. The Care Act responds to this challenge by placing on the CQC and local authorities a duty of *'market oversight'*

3. WHAT'S THE PURPOSE OF THE CARE ACT? THE VISION THING

The vision of the Care Act is taken from the White Paper, *'Caring for Our Futures'*, 2012. This dedicates the Act to putting in place:

"A modern system that promotes people's well-being by enabling them to prevent and postpone the need for care and support, and puts them in control of their lives so that they can pursue opportunities, including education and employment, to realise their potential".

Examination of this vision reveals some key themes which stress the importance of:

- the prevention disability and the maintenance of independence;
- the importance of choice, control and dignity;
- enabling those who use social care services to realise their potential and to participate in society on the same basis as every other citizen, and;
- individuals' the right to live a fulfilling life.

None of these themes are new and are reflected in social care policy since, at least, 1997. However the Care Act, for the first time, brings them together in one statute and, thereby, places them on a legal footing. In so doing the Act modernises the law so that people's wellbeing is at the heart of the care and support system

3. WHAT DOES THE CARE ACT LOOK LIKE?

The Care Act is broken down into 5 parts (or chapters) plus 8 schedules. The Parts of the Act are:

- Part 1 (Clauses 1 - 80): Care and Support
- Part 2 (Clauses 81 - 95): Care Standards
- Part 3 (Clauses 96 – 120): Health
- Part 4 (Clauses 121 – 122): Health and Social Care
- Part 5 (Clauses 123 – 129): General

From the perspective of adult social care Part1 of the Care Act is the most important and is backed up by a comprehensive set of statutory guidance and regulations. These prescribe the ways in which local authorities must apply the Act.

Duties under the Act come into effect in two stages. On 1st April 2015 changes with respect to care and support come into forces with the financial reforms required by the Act being rolled on 1st April 2016.

4 WHAT IS THE GUIDING PRINCIPLE OF THE CARE ACT?

Clause 1 of the Care Act introduces a new general duty for local authorities to *'promote of individual wellbeing'.* This duty applies to all actions taken under the Act with respect to individual care and support. The degree to which a local authority's actions promote individual wellbeing or undermine it is the *'acid test'* of the legitimacy of those actions. As a result the *'promotion of individual wellbeing'* is the guiding principle of the Care Act.

For the definition *of 'wellbeing'* see:

http://lexisweb.co.uk/acts/2014/care-act-2014-2014-c-23/1-promoting-individual-well-being

5. WHAT ARE THE MAIN CHANGES MADE BY THE CARE ACT?

The Care Act introduces many changes that impact on adult social care, the responsibilities of local authorities and their partnerships with other statutory and non-statutory organisations while placing service users and carers firmly at the centre of service provision. What follows is a brief summary, in no particular order, of the some of the Act's most important changes.

5.1 Safeguarding adults from abuse and neglect is made a statutory duty

All Local Authorities must put in place Adults' Safeguarding Boards (SABs). Haringey already has a SAB which has been operating for some time. For more information see:

http://www.haringey.gov.uk/index/social_care_and_health/safeguardingadults.htm

The Act provides a clear legal framework so that *'key'* organisations with responsibilities for safeguarding, can agree on how they work together. Local authorities, the NHS and police are the statutory members of SABs but discretion is allowed for other organisations (e.g. from the Third Sector) to participate.

Local authorities have the lead role for coordinating safeguarding activity in their areas and are responsible for ensuring that information between national and local organisations to support reviews and enquiries is shared.

A safeguarding amendment to the legislation, supported by both statutory and non-statutory agencies, which would have given social workers right of entry to people's homes where exploitation or abuse of a vulnerable adult is suspected, was **not** approved. In these circumstances powers of entry remain with the police.

5.2 The introduction of a national minimum eligibility threshold for public funded social care.

The Care Act introduces national minimum eligibility criteria governing entitlement to publicly funded adult social care services. This replaces the previous system which allowed local authorities to set their own minimum eligibility criteria leading to the development of a post code lottery. The Act's creation of national minimum criteria fixes this situation with anyone who has substantial needs being deemed as eligible although local authorities may provide services for people with lower levels of need.

5.3 Carer's will have a right to an assessment of their needs and the right to get support *if they meet the eligibility criteria.*

The Care Act enhances carers' rights to have their needs assessed and to receive support. Under the old law made their right to an assessment for social care support contingent on them '*having'* caring responsibilities which are '*significant'*. The Act lowers the barriers confronting carers access to support by doing away with the *'significance test'* and only requiring that a carer has or *'may have'* caring responsibilities to receive a needs assessment

Councils will still be able to charge for services including carer's services, but they will have a duty to provide those services to those that meet the eligible criteria.

There is more information on the Carers UK website at:

http://www.carersuk.org/search?search_generic_keyword=care+act&art_catid=&cck=help_item%2Cnews_item%2Cpolicy_document%2Ccourse%2Cbasicpage%2Cvacancy&search=generic_search&task=search

5.4 Changes to how care and support is funded.

The Act introduces the *cap on care costs* for individuals age 65 years and over, which is now set at £72,000. This amount is for care and not accommodation costs. The cap is set at lower levels for younger people with it being zero rated for young people who transferred from children's to adults' services.

This cap will come into force on 1st April 2016 and only care costs incurred from that date will count towards the cap.

Accompanying the introduction of the cap will be the launch of *care accounts* which will track the amounts people have paid towards the cost of their care allowing their progress towards the cap to be monitored. Care accounts will be portable and follow people if they move from one local authority to another.

The *financial threshold* an individual's savings/capital must reach before a financial contribution from the Local Authority will be considered for residential care will be £23,250 rising to £118,000 from April 2016.

Further details about funding can be found on Age UK's webpage:

http://www.ageuk.org.uk/Documents/EN-GB/Factsheets/FS10_Paying_for_permanent_residential_care_fcs.pdf?dtrk=true

The Care Act places a duty on Local Authorities to offer deferred payment schemes so that individuals do not have to sell their own homes to pay for residential care *in their lifetime.*

The key differences in the legislation is that Local Authorities *'must*' make deferred payments available and may charge interest on the amount deferred and an administration fee for setting up a deferred payment. This duty comes into force from April 2015.

At the time of writing no local or national decisions have been taken about interest to be charged on deferred payments and the level at which an administration fee will be set.

5.5 New duties to provide or arrange preventative services and to integrate provision.

The Care Act and its accompanying vision (see above) emphasise the importance of preventing dependency and the need for social care. The Act says: ***"A** local authority must provide or arrange for the provision of services, facilities or resources, or take other steps, which it considers will:*

(a) contribute towards preventing or delaying the development by adults in its area of needs for care and support;

(b) contribute towards preventing or delaying the development by carers in its area of needs for support;

(c) reduce the needs for care and support of adults in its area;

(d) reduce the needs for support of carers in its area".

The Care Act also introduces a new general duty to integrate health and social care services and any other health related services such as housing. This is the first time that the established national policy objective of integrating service has been translated into a statutory requirement.

5.6 Information, advice, advocacy and availability of services

Clause 4 of the Care Act places a new duty on local authorities to establish a comprehensive information and advice service covering the operation of adult social care in their areas, the care and support choices available to them, how to access care and support, how to access *'independent financial advice'* on care issues, and how to raise issues of concern. This includes the provision of information and advice to carers.

In addition the Act places a duty on local authorities to provide independent advocacy to represent and support an individual if needed to facilitate their involvement in assessments and preparing support plans. This includes advocacy support for carers, carers of children who are transitioning to adult services and young people in transition.

5.7 A duty to promote diversity and quality in provision of services and continuity of provision when providers fail.

Local Authorities must ensure that people have a variety of high quality services to *choose* from and sufficient information to make a decision about which service will meet their needs. This will apply to people who meet the eligibility criteria and those who do not.

In addition, the event of providers' businesses failing local authorities are expected to ensure continuity of support by intervening and providing alternative appropriate provision for all effected service users. This is irrespective of whether, or not, the service users are self-funded or placed by an outside authority.

5.8 Choice, control, dignity

A recurring theme within the Care Act is the importance of choice, control and dignity. In short, the provision of care and support must be a person centred, user led activity. This is reflected, for example, in the approach the Act introduces to assessments and its provision of independent advocacy to ensure that those service users who need help have their voices heard throughout the assessment process.

The Act also takes forward choice, control and dignity by requiring all service users and carers in receipt of support to have personal budgets with direct payments being the default of provision, where this is what the service user or carer wants. People who do not want a direct payment in lieu of a service, will not have to receive these payments. In this circumstance local authorities will arrange provision.

5.9 Self-Funders

Self-funders are people who have sufficient resources to fund their own care and support. They are an important group of people for whom local authorities have, traditionally, had little responsibility as they make no call on public funds. However there has been longstanding concern that self-funders do not get the help they require to identify their needs, to access information, find appropriate provision and

make alternative arrangements when things go wrong while there is a risk that once their funds are depleted they experience hardship. The Care Act confronts this situation by obliging local authorities to assess self-funders, where this is required, to offer a universal social care advice and information service, to undertake placement finding for self-funders, to step-in if providers' businesses fail and the creation of the cap on care costs and care accounts.

6. SO HOW IS HARINGEY GOING ABOUT IMPLEMENTING THE CARE ACT?

The Council has a team of staff working on the different aspects of the Care Act and is working hard to ensure that all Parts of the Act are implemented on time. To do so we have linked-up with other local authorities across London to share experiences and learn from each other. We have also commenced talking to local people and organisations to ensure that as many as possible are aware of the Act as possible and to gather their opinions about this important subject. As part of this effort a series of Rough Guides will be produced of which this is the first. If you have any comments please email:

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