





September 2014

The Care Act 2014

On 14 May 2014 the Care Bill received Royal Assent and became an Act of Parliament. The Care Act represents the most significant reform of care and support in more than 60 years, creating a single modern law that makes it clear what kind of care people should expect and putting service users and carers in control of their care and support.

This policy briefing, prepared in collaboration with the Manchester Alliance for Community Care, summarises key aspects of the new legislation and sets out what it means for the lesbian, gay, bisexual and trans (LGB&T) community.

What will the Act do?

The Act covers a number of different areas including:

- Reform of Care and Support, including radical reform for the way care is paid for in the future
- Promoting Integration and co-production
- Creating Safeguarding Adults Boards
- Promoting health and wellbeing through Local Authorities' (LA) provision/commissioning/ promotion of preventative services that will delay more costly interventions and ongoing support
- Providing clear information and advice so that individuals can navigate their way around the systems
- Provision of Advocacy for individuals challenging decisions made by the assessment process, and for vulnerable individuals who are the subject of a safeguarding enquiry
- The remit of Health Education England

The Act will introduce numerous changes, which we will highlight individually below.

1. Safeguarding adults from abuse and neglect will be placed on a statutory footing.

The Act provides a clear legal framework so that 'key' organisations with responsibilities for safeguarding can agree on how they work together. LAs must develop Adult Safeguarding Boards that include the Council, the NHS and the police but do not have to include the local voluntary and community sector (VCS). As LAs have the lead role in coordinating local safeguarding activity, they will have a lead role in ensuring that information between national and local organisations to support reviews and enquiries will be shared.

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- 2. A national minimum eligibility threshold for public funded social care will be introduced.
 - People will be able to appeal against councils' decisions on eligibility and funding for care and support. However, although the needs and wishes of the individual have to be taken into account in the assessment process, there is 'no right to enforce the delivery of either the nature, amount of service or funding which one would like, or think one deserves' (Community Care, 07.07.2014). Councils must also enable people to access independent financial advice and independent advocacy when needed.
- 3. Carers will have a right to an assessment of their needs, the right to get support if they meet the eligibility criteria, and the right to appeal.
 - Councils will still be able to charge for services including Carers services, but they will have a duty to provide services to those that meet the eligibility criteria. The Guidance as it stands isn't sufficiently clear, and as a consequence eligibility criteria could still be open to different interpretation by different councils according to their financial resources.
- 4. Changes will be made to how care and support is funded in the future.
 - The Act introduces the cap on care (but not accommodation) costs for individuals, which is now set at £72,000. The financial threshold an individual's savings/capital must reach before a financial contribution from the LA will be considered for residential care is £23,250.
 - Under the current system care home residents who need financial help from the local authority must be assessed by the local authority as needing a care home placement. The law requires that they be charged for the accommodation (unless the nature of their care exempts them), subject to a means test. If a resident is unable to pay the *standard rate*, the local authority must assess his/her ability to pay, and decide what lower amount should be charged. In addition, The 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 difference in the legislation is that Local Authorities may now charge interest on the administration costs.
 - Young disabled people will still have their social care and support needs funded through public funds.
- 5. There will be a duty on councils to provide or arrange preventative services.
 - LAs will have a duty to support people's health and wellbeing and to consider their physical, mental and emotional requirements. This will apply to service users and carers.
 - Public Health moved to LAs a year ago as Health and Wellbeing Boards developed. Through these mechanisms LAs will now be required to carry out their care and support functions with the aim of integrating services with those provided by the NHS and any other services that impact health outcomes such as housing.

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- 6. The Human Rights Act will apply to the provision of some care and support.

 People receiving care and support from a regulated provider in residential care or home setting, will be covered by the Human Rights Act if this is arranged through their council. Respect for Human Rights should be at the heart of all good care but people who self-fund will not be covered by the Human Rights Act.
- 7. A duty to promote diversity and quality in provision of services will be placed on councils. LAs 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 all people independent of whether they meet the eligibility criteria or not. The Act also requires local authorities to consider the importance of carers and disabled people being able to access work, education and training in the development of local care and support markets.

When will the Act come into effect?

The full implementation timetable is not yet known, but some provisions will come into effect in October 2014. Others such as the duty on LAs to provide deferred payment schemes come into force from April 2015. The care costs cap will come into effect in April 2016 and this is likely to be the backstop date for implementation.

What does the Care Act mean for the LGB&T community?

As the LGB&T community is very diverse the Act will affect individual LGB&T service users and carers in different ways. Generally speaking, it offers the potential for much improved care and support arrangements for LGB&T people across the board, but it also presents some potential challenges.

A crucial point in this regard is the Act's emphasis on increasing individuals' choice and control, promoting health and wellbeing, providing information and advice, and enshrining a right to appeal supported by independent advocacy. This takes the personalisation agenda another step further and should in theory mean that the specific needs of LGB&T people will be met much better in future. However, this will be limited by the extent to which LGB&T people feel comfortable describing their circumstances and voicing their needs freely without fear of homophobia, biphobia or transphobia. This will also be limited by LAs market shaping strategies as currently very few LGB&T people benefit from real choice and control due to a lack of LGB&T specific service provision and commissioning in most areas. Whether this will be prioritised by LAs in the context of tight financial resources remains to be seen.

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In addition, it is essential that LAs take structural inequalities that affect the wellbeing of marginalised groups such as LGB&T people into account when economic wellbeing and safety needs are considered as part of assessments. Clear guidance on this to LAs is still outstanding.

Furthermore, while having access to the right information at the right time should allow LGB&T people to make informed choices and decisions, it is crucial that this information is accessible. For LGB&T people accessibility is determined by the use of non-heteronormative, non-monosexist and non-cisnormative language and imagery that presents a range of same-sex situations and gender variant people.

Finally, improvements in care and support arrangements for LGB&T people on a system-wide and population level will only be realised through rigorous and consistent sexual orientation and gender identity monitoring.

Further information and resources

Fact sheets about the Care Act's content https://www.gov.uk/government/publications/the-care-bill-factsheets

Information for carers from Carers UK http://www.carersuk.org/for-professionals/policy/policy-library/care-act-2014

Information about care funding from Age UK http://www.ageuk.org.uk/Documents/EN-GB/Factsheets/FS10_Paying_for_permanent_residential_care_fcs.pdf?dtrk=true

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