



Where there's a Will there's a Way

Factsheet

October 2015

Introduction to the *Care Act 2014*

About this factsheet

The *Care Act 2014* ('the Care Act') has replaced nearly all the old legislation and supporting guidance covering the care needs and rights to support of both adults with social care needs and adult informal or family carers.

Most of it comes into force in England from April 2015, but the planned new developments in paying for care will not now take effect until April 2020 – the original plan was for April 2016 implementation. In April 2015, the government decided to delay the implementation of the funding element of the reforms until the later date.

This factsheet is designed to give you an overview of the *Care Act 2014* and what it means for you as an older person with care needs and/or as a carer. It is an introductory summary of the new legal framework for social care.

This factsheet describes the situation in England. There are significant differences in how social care for adults and carers works in Northern Ireland, Scotland and Wales. If you want information about these nations contact the relevant national office for help.

Inside this factsheet

1	What's changing and what isn't?	3
2	The system for adult social care support	4
3	Wellbeing	5
4	Assessing needs	6
5	Deciding whether your needs meet the national eligibility threshold	8
	5.1 People with social care needs	8
	5.2 Carers	9
6	Care and support planning	10
7	Spending the personal budget	11
8	Charging	12
	8.1 Self-funders	13
9	Safeguarding	14
10	Advocacy	16
11	Continuity of care – support when you move	16
12	Appendix	17

1 What's changing and what isn't?

What's changing in April 2015

What is changing is the system for supporting adults and carers who need help from local authority adult social services teams. Many of these teams are now called 'adult social care', so we'll refer to them here as 'adult social care' or just the 'local authority'.

These are some of the significant changes:

- Adult social care must always put the wellbeing of individuals at the heart of any decision-making.
- There are new duties on adult social care to provide information and advice, for instance about how the system works, how to manage the financial aspects of meeting care needs; and especially how to help prevent, delay or reduce the need for care and support – to keep people as healthy and independent as possible.
- Carers now have similar rights to services to the adults they care for. This has not happened in the past.
- There are new national eligibility criteria to decide whether carers and adults with care needs are eligible for care and/or support from the local authority.
- More people will have the right to an advocate (see section 10 below).
- There are new rules to make it easier for people to plan their care arrangements when they choose to move from one local authority area to another.
- The Act covers adult safeguarding.

One of the changes under the *Care Act 2014* is that local authorities can now delegate a lot more. Also, although assessments must be carried out by people who are properly trained and supervised, they need not necessarily be qualified social workers. So, for instance, local authorities can delegate assessments or care planning to a voluntary sector organisation or a private company. However, if they do that, they are still legally responsible for meeting all their obligations under the Act and for making sure that the assessment findings are correct.

What isn't changing yet

Most of the changes to the system for paying for care, sometimes known as the charging system, will not take effect until April 2020. The new charging rules are not yet available but when they are this factsheet will be updated.

What isn't changing

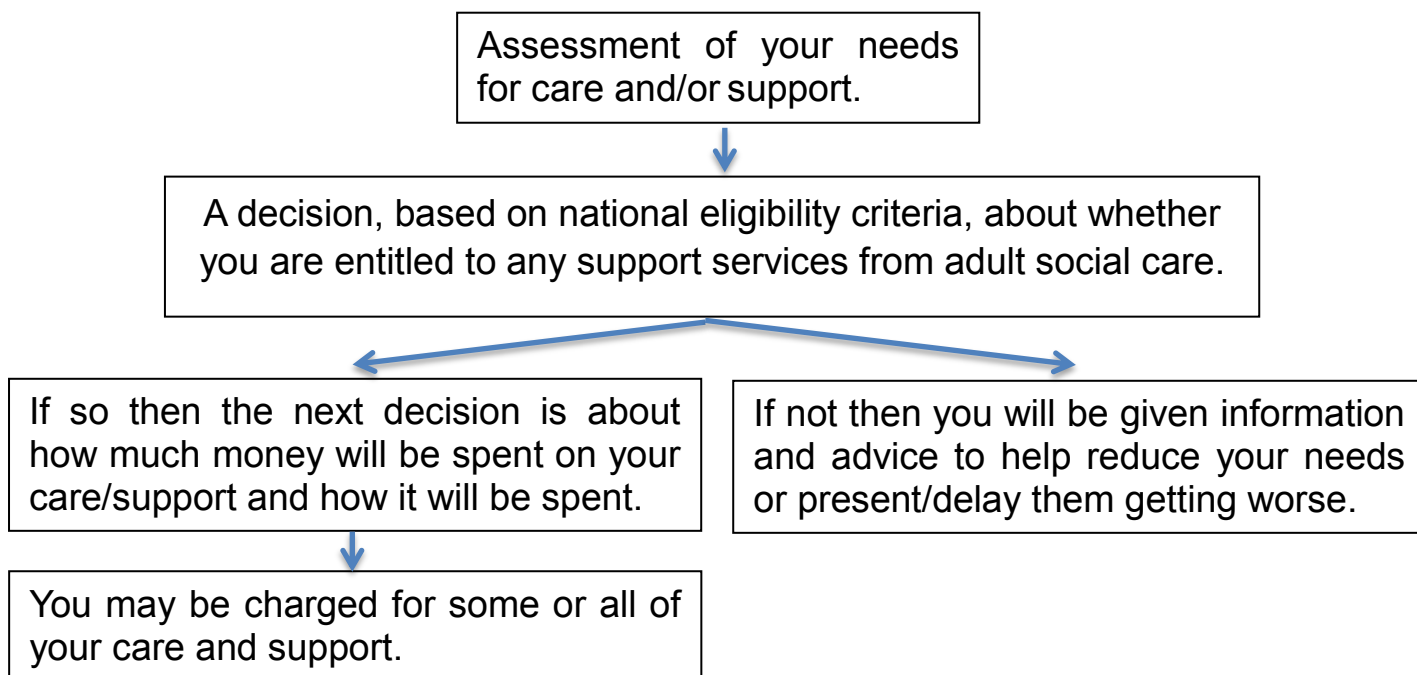
The general principles in the *Care Act 2014* – assessment of needs and provision of local authority support and charging for services – apply equally to people who have mental capacity to make decisions about their care and support and people who don't have the mental capacity to make their own decisions about care needs. This includes people with mental health issues and learning disabilities.

The *Mental Capacity Act 2005* still covers people who lack the mental capacity to make some social care decisions, for instance people with advanced dementia. The *Mental Health Act 1983* still sets out the arrangements for looking after, assessing and treating people with a mental disorder. The *Care Act 2014* generally doesn't affect either of these.

See Appendix at section 12 for further information about the new legal basis for this factsheet.

2 The system for adult social care support

This diagram gives an overview of the process for getting help from adult social care. It is the same whether you have care needs yourself or are a carer.



As well as the *Care Act 2014* itself, there are 21 sets of new regulations that set out the law in more detail and almost 500 pages of new statutory guidance about how the Act should work in practice. They replace the old regulations and guidance.

3 Wellbeing

The *Care Act 2014* requires local authorities (adult social care teams) to carry out their work in a way that will *promote your wellbeing*. This applies whether you are an older person who may need care or a carer looking after another adult.

Wellbeing, as defined by the Act, includes:

- a) personal dignity (including treating you with respect);
- b) physical and mental health and emotional wellbeing;
- c) protection from abuse and neglect;
- d) control by you over your day-to-day life (including your care and support arrangements);
- e) participation in work, education, training or recreation;
- f) social and economic wellbeing;

- g) domestic, family and personal relationships;
- h) suitability of your living accommodation;
- i) your contribution to society.

This applies to all stages of adult social care involvement. The *Care Act 2014* statutory guidance to local authorities explains that promoting wellbeing means *actively* seeking improvements in all the aspects listed above when they are working with you as individuals and when they are planning strategically how best to fulfil their legal responsibilities.

This legal duty is set out at the beginning of the Act because it is an important principle that adult social care did not have to consider under the old law.

4 Assessing needs

The process of getting help starts once a referral is made to adult social care (at your local authority), someone asks for an assessment for themselves, or the adult social care department becomes aware that someone might need help. If you are an older person or carer who *may* need care or support, the local authority has a legal duty to assess your needs. This is usually carried out by a social worker, but it may also be done by an occupational therapist.

If you are a carer the assessor must consider your likely future needs, not just your situation today when assessing. In either case the local authority must give you information and advice about how the system works to help you understand the process and procedures in your local area.

The *Care Act 2014* states:

- The duty to carry out an assessment applies regardless of your financial circumstances. That means that adult social care should not ask you about your financial situation at the assessment stage; that comes later.
- The assessor must take into account wellbeing factors (see 'Wellbeing') and also the outcomes you want – in other words what you want to achieve through the social care system.
- If you are a carer, the assessment must involve you and anyone else you would like to be involved.

- If you are an older person with care needs the assessment must involve you and your carer (if you have one), plus anyone else you would like to be involved.
- The assessment must consider all your care and support needs and think about how to help you.
- If your needs fluctuate, for instance if you have an illness like Parkinson's Disease or a mental illness, the assessment must last long enough to ensure that the social worker understands the full range of your needs.
- You are entitled to have a written copy of your assessment.

If you are a carer, your assessment must also include:

- whether you are willing and able to continue to care;
- whether you work or want to work; and
- whether you are involved in any education, training or leisure activities, or would like to be.

An assessment must be proportionate and appropriate – that is, it should be suitable for you. It will not necessarily be face-to-face, although if you have any mental health problems, memory problems, difficulties in making decisions for yourself, or other complex needs, then it should be. Otherwise the assessment may be:

- a supported self-assessment (where you complete the form, but someone from adult social care checks with you that it accurately reflects your needs);
- an online or phone assessment (in straightforward cases);
- a joint assessment (e.g. if you agree to this, you and your carer could be assessed together); or
- a combined assessment (e.g. if you agree, your social care needs could be assessed at the same time as, say, a health assessment).

5 Deciding whether your needs meet the national eligibility threshold

The eligibility threshold is different for people with care needs and for carers.

5.1 People with social care needs

You will meet the eligibility threshold if:

- you have needs connected with any kind of disability or illness; and
- those needs prevent you achieving two or more outcomes in the list below; and
- that results in a **significant impact** on your wellbeing (see section 3 of this factsheet).

This is the list of outcomes in the regulations:

- (a) managing and maintaining nutrition;
- (b) maintaining personal hygiene;
- (c) managing toilet needs;
- (d) being appropriately clothed (this includes being able to get dressed);
- (e) being able to make use of the adult's home safely;
- (f) maintaining a habitable home environment;
- (g) developing and maintaining family or other personal relationships;
- (h) accessing and engaging in work, training, education or volunteering;
- (i) making use of necessary facilities or services in the local community including public transport, and recreational facilities or services and
- (j) carrying out any caring responsibilities the adult has for a child.

The regulations go on to say that you will be treated as unable to achieve an outcome if you are:

- (a) unable to achieve it without assistance;
- (b) able to achieve it without assistance but doing so causes you significant pain, distress or anxiety;
- (c) able to achieve it without assistance but doing so endangers or is likely to endanger the health or safety of you, or of others; or
- (d) able to achieve it without assistance but take significantly longer than would normally be expected.

5.2 Carers

You will meet the eligibility threshold if:

- you have needs connected with providing necessary care; and
- those needs mean that your physical or mental health is deteriorating or is at risk of deteriorating, or you are unable to achieve any of the outcomes set out in the list below; and
- that results in a **significant impact** on your wellbeing (see section 3 of this factsheet).

This is the list of outcomes in the regulations:

- (i) carrying out any caring responsibilities the carer has for a child;
- (ii) providing care to other persons for whom the carer provides care;
- (iii) maintaining a habitable home environment in the carer's home (whether or not this is also the home of the adult needing care);
- (iv) managing and maintaining nutrition;
- (v) developing and maintaining family or other personal relationships;
- (vi) engaging in work, training, education or volunteering;
- (vii) making use of necessary facilities or services in the local community, including recreational facilities or services; and
- (viii) engaging in recreational activities.

As a carer you will be treated as unable to achieve an outcome if you are:

- (a) unable to achieve it without assistance
- (b) able to achieve it without assistance but doing so causes you significant pain, distress or anxiety or
- (c) able to achieve it without assistance but doing so endangers or is likely to endanger the health or safety of you, or of others.

Note: When adult social care is deciding whether the person you care for meets the eligibility criteria they cannot, at this stage, take into account the care you provide. They have to make a decision about the needs of the person you care for as though you were not there to help. The *Care Act 2014* guidance makes this clear.

6 Care and support planning

Whether you are a service user or a carer who meets the eligibility criterion, the next stage is for adult social care to work closely with you to plan how to support you to meet your eligible needs.

The local authority **must** give you advice and information about how to prevent or delay needs developing or increasing. This applies equally to carers and older people with care needs. For example, your social worker might suggest that you go on a local NHS health walk once a week to help you stay active and well.

They must then decide whether any of your eligible needs can be met **without** support from the local authority. So, if you are an older person with care needs, your social worker will first of all find out whether your carer is willing and able to provide any of the support you need and, if so, how much. They will also decide whether some of your needs could be met by other provision in your local area, e.g. by joining a society or going to a lunch club.

If, after that, you still have unmet eligible needs the local authority has a legal duty to support you to meet those needs.

First you will be given a 'personal budget' figure. This is the sum of money that the local authority thinks it will cost to meet your remaining eligible needs. The figure will be net of any charge made to you (see below). At first the personal budget will be approximate (this is often called an 'indicative amount').

The next stage is for your social worker to help you to plan how to meet your eligible needs. You should have as much control as possible over deciding how your needs will be met. The care plan should be devised with you and should set out how your care needs (or support needs if you are a carer) will be met. Once the details are agreed then adult social care will double-check that the personal budget has been set at the right level and make any adjustments. You should be given reasons for the decision made about the level of your personal budget.

Under the old community care laws there were lists of services that could be provided to meet care needs. The *Care Act 2014* doesn't talk about services at all, it simply gives some examples of how to meet needs, for instance by care home accommodation or care and support at home or in the community.

This is because of the government policy known as 'personalisation'. The idea is to focus on what you want to achieve through your care plan and to find creative ways of meeting needs that mean you have as much choice and control as possible. This is thought to be a better option than providing a list of services, which can constrain choice. The only limiting factor really is that however your personal budget is spent, it must be directed to meeting your care and support needs.

7 Spending the personal budget

There are three main ways of arranging your personal budget:

- as a managed account held by the local authority with care support purchased and provided in line with your wishes;
- as a managed account held by a third party (often called an individual service fund) with care and support purchased and provided in line with your wishes;
- as a direct payment.

If you opt for a direct payment, you will receive the money yourself and will arrange and pay for your own care and support. This means you will have a lot more control over your own care or support arrangements, but you will also have the responsibility of arranging the care yourself. If your care plan includes having a care worker or personal assistant to help you, then you rather than the local authority will employ the person.

8 Charging

From April 2016, one significant change was planned to be the introduction of a cap, meaning no one will have to pay any more for their eligible care needs once they have spent a total of £72,000. **However, this policy has now been delayed until April 2020, at which time the figure may be different.** Your local authority will have to monitor your contributions in a care account from that date. Another important development will be the introduction of an accommodation charge for residential care in care homes – this is often referred to as the ‘hotel cost’. **It will cover accommodation and ordinary living costs, but not social care – at the moment this seems likely to be set at £12,000 a year (or £230 per week for April 2016), but this figure may change due to the delay in implementation that has been announced.**

Unlike health care, for which the NHS is responsible, social care is not generally free at the point of delivery. It is a means-tested system and local authorities can charge anything up to the full cost to them of meeting your care and support needs.

Once adult social care has decided that you meet the eligibility criteria (see section 5) and that you need social care support services, there will be an assessment of your finances to decide whether you have to pay and, if so, how much. This includes income (for example your pension) and capital (for example savings). This can be quite minimal if it is clear either that you are eligible for free care or if you are sufficiently well off to have to pay the full costs of your care. Otherwise there is a detailed financial assessment, usually carried out by specialist financial officers from the local authority rather than by your social worker.

There are some differences between the charging rules related to whether you are staying in your own home or going to live in a care home.

8.1 Self-funders

The term 'self-funders' generally refers to people assessed as having sufficient financial assets to pay the full costs of care, either domiciliary care at home and in the community or residential care in a care home.

If you are a self-funder there are some minor changes already introduced by the *Care Act 2014*, with effect from April 2015.

These are to do with deferred payment schemes and the arrangement fee for setting up your care arrangements (see below).

8.1.1 Deferred payment schemes

If you move into residential care, depending on who is still living in your old home, the local authority may take into account the capital value of your home when they financially assess you. This has led to people having to sell their home when they would prefer not to.

There is now a legal duty on the local authority to consider entering into a deferred payment agreement with you if you want that and have enough capital in your property to justify it. This operates rather like a mortgage and means that, instead of you selling your home, the local authority can take a charge over it to cover your care home fees. Interest will accrue on the debt from the start, again rather like a mortgage arrangement, and the debt plus the interest will have to be repaid to the local authority once your house is sold.

8.1.2 Arrangement fee for setting up your care arrangements in the community

If you need to go into a care home as a self-funder, the local authority will give you advice and information on choosing the right home, but they will generally leave it to you and your family to make the arrangements. However, they should assist if you cannot manage this and have no one to help you.

If you can continue to live in your own home, but need care support, for instance care workers to help you get dressed and bathed, then you can decide how to arrange this. Again the local authority must provide you with information about how the system works, and they cannot charge you for that. On the other hand, if you want the local authority to make the arrangements for you, find the right care staff and set up the contract, etc, you can ask for this. The local authority can charge you an arranging fee for this service.

However, in either case where someone lacks the mental capacity to arrange their own care, and has no one to assist them, the local authority must make the arrangements free of charge.

9 Safeguarding

Safeguarding procedures are designed to protect adults who may be vulnerable to abuse or neglect. Until the *Care Act 2014*, adult safeguarding was only dealt with in guidance, but this has now changed and adult safeguarding is part of our law.

This means that adult social care must carry out an investigation if they have:
reasonable cause to suspect that an adult in their area:

- a) has needs for care and support (whether or not the local authority is meeting any of those needs);
- b) is experiencing, or at risk of, abuse or neglect; and
- c) as a result of those needs is unable to protect her/himself against the abuse or neglect or the risk of it.

It is up to the local authority to decide how to carry out the investigation.

The *Care Act 2014* guidance lists many possible forms of abuse and neglect:

- physical abuse;
- domestic violence;
- sexual abuse;
- psychological abuse;
- financial or material abuse;
- modern slavery;
- discriminatory abuse;
- organisational abuse;
- neglect and acts of omission;
- self-neglect.

An investigation may lead to extra care support or a change in the way services are provided. It could, occasionally, lead to the police becoming involved if there might have been a crime committed.

Other agencies such as the Care Quality Commission (the industry standards regulator) may be involved in identifying abuse or neglect where a service provider is involved.

Under the *Care Act 2014* the local authority will also have to set up a Safeguarding Adult Board, involving other agencies such as the police and the NHS, to oversee the safeguarding of vulnerable adults in the area. The Board will also carry out reviews if someone has died possibly as a result of abuse or neglect, and where there is a suspicion of serious abuse or neglect.

As part of their duty to provide information, local authorities must let people know how to report suspected abuse.

10 Advocacy

The *Care Act 2014* sets up a new independent advocacy scheme to help people who experience substantial difficulties in understanding or making decisions about their care and have no ‘appropriate person’, such as a carer, friend or family member to help them engage in the process. They are entitled to the support of an advocate – a professional whose job is to help them understand the system and put their views across.

This builds on the scheme that already exists (under the *Mental Capacity Act 2005*) for people who have a significant mental impairment. It applies to people who have ‘substantial difficulty’:

- understanding relevant information (about social care and health issues);
- retaining that information;
- using or weighing up the information;
- communicating their views, wishes or feelings.

If you care for an older person in this category, then they will probably not be entitled to an advocate, because you will be seen as an ‘appropriate person’. Sometimes this changes if there is a dispute between you and the local authority over what’s best for the person you care for. If the local authority thinks that what you want for that person isn’t in their best interests, then they can appoint an independent advocate. The advocate’s job is to try to find out what the person you care for wants and feels, and help identify what is in their best interests.

11 Continuity of care – support when you move

In the past it has been difficult for people with care needs to move from one local authority area to another, because of the uncertainty both about what support will be available after the move and how long it will take to get any help.

The *Care Act 2014* has put a new legal duty in place to try to enable a smooth transition from one local authority to another. If you have a care or support plan in place and decide to move, you should notify the new (second) local authority of your plans. If the second local authority accepts that your intention is genuine then they must:

- provide you and your carer with information;
- obtain relevant information from the first local authority and then carry out an assessment of you (and your carer) themselves;
- if they come to a different decision from the first authority about your needs and/or your personal budget, they must provide you with a written explanation of why that is.

If the second local authority does not fulfil these duties, for example because they wrongly decide that you don't genuinely plan to move, they have to honour your existing care plan in full. This means there will be no gap in your support. They will not be able to make any changes to your care package unless and until they have completed their own assessment and given you written reasons for any changes they want to make to the package.

12 Appendix

There are four main sources for the new law and rules on adult social care on which this factsheet is based:

1/ The Care Act 2014

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

Part 1 of the Act is the main source for this factsheet as it replaces over 60 years of adult social care legislation.

2/ Care and Support Statutory Guidance, issued under the Care Act 2014:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/366104/43380_23902777_Care_Act_Book.pdf

This large document supports the *Care Act 2014* and the regulations listed below. A local authority must have regard to its relevant sections when administering the charging system. There is significant overlap with some of the regulations for example regarding section 8 'Charging and financial assessment' and the Annexes at the end of the document, particularly B and C on the treatment of capital and income.

3/ The final negative regulations under part 1 of the Care Act 2014:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/376204/2903119_Care_Act_Negative_Regulations_Master.pdf

This document contains many new regulations including the *Care and Support (Charging and Assessment of Resources) Regulations 2014*, which closely resembles the previous CRAG document that has now been superseded.

4/ The final affirmative regulations under part 1 of the Care Act 2014:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/366048/43738_2902999_Regs_Affirmative_Accessible.pdf

A significant regulation within this document is the *Care and Support (Eligibility Criteria) Regulations 2014*.

Note: The terms 'negative' and 'affirmative' refer to the regulations' status prior to finally coming into force in April 2015.

Disclaimer and copyright information

This factsheet contains general advice only which we hope will be of use to you. Nothing in this factsheet should be construed as the giving of specific advice and it should not be relied on as a basis for any decision or action. Thy Will be done accepts no liability arising from its use. We aim to ensure the information is as up to date and accurate as possible, but please be warned that certain areas are subject to change from time to time. Please note that any inclusion of named agencies, websites, companies, products, services or publications in this factsheet does not constitute a recommendation or endorsement by Thy Will be done.

Every effort has been made to ensure that the information contained in this factsheet is correct. However, things do change, so it is always a good idea to ask us specifically about your personal situation.