



## How will the new Care Act legislation affect me, and how can Irwin Mitchell help me to prepare for any changes?

At Irwin Mitchell we provide our clients with specialist support and guidance, this fact sheet details everything you need to know about the new Care Act legislation, and how it might affect you.

### The Care Act 2014 has been billed as the most important piece of social care legislation to come into force for the past 20 years.

Along with the Act itself, there are new Regulations and Statutory Guidance which provide further guidance on how social care will be provided to adults going forwards. This replaces the existing statutory guidance that is in place.

- Part 1 of the Care Act reforms and consolidates all existing law relating to adult social care.
- Part 2 of the Care Act relates to care provision and regulation, such as reforms to the Care Quality Commission.

The majority of the Care Act came into force on 1 April 2015. However most of the financial reforms, including new financial thresholds for self-funded care and the care cap are expected come into force on 1 April 2016.

The Care Act does not affect the way that social care is provided to children, with the exception of young people and carers who are 'transitioning' to adult social care services.

### Key new duties

The Act sets out some important general duties that local authorities will need to bear in mind when carrying out all decision making in relation to adults with social care needs:

#### 1. The "wellbeing" principle

Local authorities have a duty to promote a person's well-being. This encompasses issues such as considering a person's dignity, respect, protection from abuse, and both physical and mental health.

#### 2. Preventing needs for care and support

Local authorities will have a duty to consider how to prevent a person's needs from becoming greater. This applies whether or not an individual is eligible for services and support under the rest of the Act.

#### 3. Provision of integrated services

There is a duty upon local authorities to work together with health services to promote and provide integrated services to people with disabilities.

#### 4. Information and advice

Local authorities must provide information and advice setting out what support services are on offer and may be available for disabled people and their carers.

### Access to care support

The process for obtaining care and support remains largely the same under the Care Act 2014, but is clarified in the Act, and some new duties now apply:

#### 1. Care assessment

An assessment will be carried out in a case where a person "may have needs for care and support". These assessments will be person-centered and will consider the impact of the disabled person's needs upon other family members.

If the individual lacks capacity to make decisions about their care, then the local authority must provide them with an independent advocate that can support them in the assessment process.

#### 2. Eligible needs

The second step is to determine which of the needs that have been identified in the care assessment are "eligible" needs and must be met by the local authority.

Under section 13 of the Care Act, local authorities will need to apply the eligibility criteria that are set out in the Regulations as a 'minimum'. The criteria will apply across the country nationally, and so it is hoped there will be less of a postcode lottery when accessing care support.

#### 3. Meeting the needs

After determining the eligible needs, the next step is to determine how the needs will be met. Section 18 of the Care Act states that provided an adult is ordinarily resident in a local authority's area, that the local authority is under a duty to meet those eligible needs. Details of the support to be provided will be

set out in a "care and support plan" by the authority, with a separate "support plan" being created for carers.

Local authorities must also provide information and advice to people about accessing support services, even where those needs are not going to be directly met by the local authority.

#### 4. Providing services and support

Local authorities will need to carry out a financial assessment of any individuals with eligible needs, to determine if a contribution needs to be paid. If individuals have income and capital above the upper threshold amounts, the local authority does not have to meet their eligible needs, unless the individual chooses to pay.

The local authority can continue to commission services directly, or provide individuals with direct payments where this is preferred by the individual.

### Transition from children's to adult's services

Although the Care Act 2014 applies only to disabled adults, it does contain some important provisions relating to transition, as disabled children approach adulthood.

Under section 58 of the Care Act, local authorities will be under a duty to identify disabled children who may have needs for care and support upon reaching 18, carrying out an assessment of those needs. Local authorities will need to determine whether it is likely that support will be required, and must then provide advice and support on how those needs can be reduced, prevented or delayed, before the child reaches the age of 18.

### Advocacy support

Under section 67 of the Care Act, local authorities will need to consider whether an adult may have "substantial difficulty" understanding information relating to the needs assessment process, retaining that information, using or weighing up that information, or communicating their views.

Access to an independent advocate or an appropriate person who can support them must be provided, and access to an advocate is mandatory in cases where the dispute between the local authority and the person's supporters, or where the individual is going to be moved from their home into an NHS care home or hospital for a certain period.

"I was given very clear information and the degree of care and understanding was very good. They are very professional and attentive."  
- Chambers & Partners, 2015

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PLS-PL-0018-FS

