

## What the Care Act means for you

This handout is designed to give you some more information about the Care Act and what its new rules and regulations mean for you. If you have any questions after the presentation, please contact Henry Barnes on email at [henry.barnes@nas.org.uk](mailto:henry.barnes@nas.org.uk) or by phone on 07436 810 918.

### What is the Care Act?

The Care Act 2015 came into force on 1 April 2015.

It is a new law that brings 37 old pieces of legislation and guidance about care and support under one law. It aims to:

- Simplify
- Bring in new rules for councils about who is eligible for care and support
- Give carers the same rights as the people they care for

Why make the changes?

- There was a patchwork of systems that varied between local authorities
- A single set of criteria for the whole country is supposed to tackle this variation

It only covers **adults** in **England** (there is a similar act going through in Wales)

It works with some other laws like the Children & Families Act and the Autism Act

### What do we mean by 'care and support'?

Care and support is the new name for "community care"

It means services that you traditionally get from social services, e.g.:

- Support worker
- Residential care or supported living
- Respite
- Day services

These can be really broad (including informal support from family, or non-funded information and advice), but we generally mean statutory, or state-funded, support

### What does it mean for me?

In this section, we will run through some of the key new duties in the Care Act.

## ***Legal Right to an Assessment***

Any adult with an appearance of care and support needs has a legal right to have an assessment

What does an assessment do?

- Identify the extent of need
- How this affects wellbeing
- Whether there are eligible support needs
- Identify outcomes that the individual wants to achieve

Supported self-assessments

- Jointly between the adult and the council
- If you choose a supported self-assessment you should complete an assessment answering the same questions that would be covered if someone else assessed you.
- Social services then have to assure themselves that your self-assessment is accurate and complete but they should not do this by repeating the full assessment process again.
- You don't have to do it this way if you don't want to

A person carrying out an assessment must have the skills, knowledge and competence to carry out the assessment and be trained. This includes knowing enough about someone's condition. There are also particular rules for people who are deafblind. The Act sets out a minimum level of training in deafblindness for the assessor.

If the assessor doesn't have the knowledge and skills, they have to consult with someone who does have them.

The council must involve the person being assessed in the process, any carer the person has, and any other person requested. In order to do this, the council needs to establish what someone's communication needs are. In advance of the assessment, the council should provide (in accessible format) the list of questions to be covered (this will help the person prepare/think about the outcomes they want to achieve before the assessment).

## ***Eligibility Criteria for Care and Support***

The Care Act has introduced standard eligibility criteria for care and support across England

To be eligible for care and support, you must be unable to achieve two of the following outcomes:

- managing and maintaining nutrition
- maintaining personal hygiene
- managing toilet needs
- being appropriately clothed
- being able to make use of the adult's home safely
- maintaining a habitable home environment
- developing and maintaining family or other personal relationships
- accessing and engaging in work, training, education or volunteering
- making use of necessary facilities or services in the local community including public transport, and recreational facilities or services
- carrying out any caring responsibilities the adult has for a child

AND as a consequence, there is likely to be a significant impact on the adult's wellbeing

“Unable” can mean needing assistance, or prompting to do it. Or if doing it causes pain or anxiety, or takes significantly longer. This is relevant when considering a person with autism, sensory loss or learning disability as opposed to a physical disability.

If, following an assessment, it is considered that a person meets the eligibility criteria, they will be considered as having ‘eligible needs’.

### ***Rights for carers***

The Care Act has introduced new statutory rights for carers to get:

- Assessment of their needs
- Care and support to meet those needs
- A personal budget

To meet the eligibility criteria for carers, the need for support must arise as a consequence of providing care for an adult. The carer’s physical or mental health will also be (or be at risk of) deteriorating OR they will be unable to:

- carry out any caring responsibilities the carer has for a child;
- provide care to other persons for whom the carer provides care;
- maintain a habitable home environment in the carer’s home (whether or not this is also the home of the adult needing care);
- manage and maintaining nutrition;
- develop and maintaining family or other personal relationships;
- engage in work, training, education or volunteering;
- make use of necessary facilities or services in the local community, including recreational facilities or services; and
- engage in recreational activities.

As a consequence of this, if there is, or likely to be, a significant impact on the carer’s wellbeing, then they will be eligible for support (subject to financial assessment). The meaning of “significant impact” isn’t defined in the Care Act, so it has its usual, everyday meaning.

### ***Preventative Support and Wellbeing***

Councils have duty to provide services to prevent, delay or reduce individuals’ needs for care and support, or the needs for support of carers

- Preventative support is a broad term: means support that will stop you needing more intensive care and support later. This could include things like befriending and social groups

It can be important for people who need some help, but do not meet the eligibility criteria for social care services

Councils have a duty to promote wellbeing whenever they provide care and support. This means that they have to consider things like:

- personal dignity
- physical and mental health and emotional wellbeing
- protection from abuse and neglect
- control by the individual over day-to-day life
- participation in work, education, training or recreation
- social and economic wellbeing
- suitability of living accommodation

## ***Care and Support Planning***

Plans should include:

- What your needs are and any related risks
- Whether you meet the eligibility criteria
- What needs that the authority is going to meet, and how
- How it meets the outcomes you want to achieve
- What your personal budget amount is
- Information and advice on what can be done to reduce your needs, and to prevent or delay the development of needs in the future
- What services you would prefer
- If your condition fluctuates, how the care and support plan deals with this
- A plan in case of a sudden change or emergency
- Details of services you will be receiving
- Details of any charges you need to pay
- If you have a direct payment, which of your needs it applies to, how much and how often you get a payment
- If you carers are willing and able to provide some care
- A date to review the plan

## ***Personal Budgets***

A personal budget is a statement of the amount of money needed to meet a person's eligible care needs. The budget must be sufficient to meet the person's eligible needs.

Councils must allow people who have eligible care needs to have a personal budget.

Some people prefer social services to manage their personal budget and to organise their support. This is called a "virtual budget" or a "council-managed budget".

Some people prefer to get their personal budget through a direct payment (money straight to your bank account)

**You can choose how you would like to use your personal budget.**

## ***Transition Planning***

Under the Care Act, a transition assessment must be done if a young person is likely to have care and support needs after they are 18, regardless of whether they receive care and support as a child. The council can then choose to treat this transition as an adult needs assessment when the young person turns 18 (based on how long ago the transition assessment was done and whether circumstances have changed). Otherwise they might carry out a new adult needs assessment. The needs of carers, or of young carers who are approaching adulthood should also be assessed.

Councils must carry out a transition assessment to decide what support is needed:

- No set time – when it is most appropriate for the young person (taking into account their stage at school, if they want to go to college, if they want to move out of home, etc.)

A transition assessment should cover:

- Current needs for care and support
- If the young person is likely to have needs after the age of 18
- If so, what those needs are likely to be, and if they are likely to be eligible needs

- The outcomes the young person wishes to achieve in day-to-day life and how care and support (and other matters) can contribute to achieving them

Importantly, the Care Act guidance says that there should be no “gap” in provision. Therefore, if new support is not in place by someone’s 18<sup>th</sup> birthday, the council must carry on providing the previous support until they have decided if the person qualifies for adult care (and then puts support in place, if appropriate).

Transition also overlaps with the Children & Families Act 2014: Young people with an Education, Health & Care (EHC) plan should have this as part of an annual reviews that take place from Year 9 onwards

For young people over the age of 18, the needs assessment should be incorporated into their EHC plan

### ***Safeguarding Adults at risk of abuse***

The Care Act introduces new safeguarding duties on local authorities. Abuse or neglect can take many forms: e.g. physical, emotional, or financial abuse, withholding medical support, or exploitation.

What is abuse? The Care Act guidance gives a list (but it is not exhaustive), including:

- Physical abuse – e.g. including assault, hitting, slapping, pushing, misuse of medication, restraint or inappropriate physical sanctions.
- Domestic violence
- Sexual abuse
- Psychological abuse – e.g. including emotional abuse, threats of harm or abandonment, depriving someone of contact, cyber bullying.
- Financial or material abuse – including theft, fraud, internet scamming.
- Neglect and acts of omission – including ignoring medical, emotional or physical care needs
- Self-neglect – this covers a wide range of behaviour neglecting to care for someone’s personal hygiene, health or surroundings and includes behaviour such as hoarding.

Councils must make enquiries whenever abuse or neglect are suspected, and to determine if further action is needed to keep someone safe. This does not depend on whether they are otherwise eligible for care and support. If the council thinks further action (e.g. a safeguarding plan) is needed, it is under a duty to do it.

Every council must have an Adult Safeguarding Board.

If you or someone you know is at risk of abuse or neglect, you should contact your social services department.

### **How can I get involved?**

There are lots of ways you can help shape your local care and support services.

#### **As an individual:**

- If there is a breach of a legal duty, you might want to write to your local authority. Irwin Mitchell solicitors have developed some template letters: [www.irwinmitchell.com/personal/protecting-your-rights/social-healthcare-law/the-care-act/care-act-factsheets-and-template-letters](http://www.irwinmitchell.com/personal/protecting-your-rights/social-healthcare-law/the-care-act/care-act-factsheets-and-template-letters). You might also want to seek legal advice
- Find out more about local organisations who might be able to find out more:

- Local HealthWatch
- Local charities (e.g. National Autistic Society, Mencap, Scope or Sense branches)

#### **As a campaigner:**

- Talk to local politicians. See if they can help.
- Meet with your Director of Adult Social Services and other local commissioners
- Respond to the Health & Wellbeing Board consultations on the joint strategic needs assessment and health and wellbeing strategies
- Talk to your local campaigning organisations/charity branches!

#### **What about the Autism Act?**

Autism Act says there has to be:

- A strategy to improve services (*Think Autism*, 2014)
- Statutory guidance, telling councils and NHS what they have to do
- 

You can find out more about these documents at [www.autism.org.uk/autismstrategy](http://www.autism.org.uk/autismstrategy).

Failure to implement can mean an authority opens itself up to legal challenge

Applies to councils and the local NHS (e.g. CCGs and hospital trusts, and sometimes NHS England)

The statutory guidance adds detail to the Care Act about what councils should be doing specifically for adults with autism

Some things are “must” and some things are “should”

- “Should” means they have to do it, unless they can show a good reason not to
  - E.g. providing something similar or better in a different way
  - Expense alone is not a good reason for not doing it

#### Staff Training

Autism awareness training as part of equality and diversity training for all staff in health and care services

- This training should enable staff to identify signs and make reasonable adjustments

Staff who work with adults with autism (e.g. OTs, personal assistants, care workers, frontline health staff including all GPs) should be able to:

- Use appropriate communication
- Support families and friends
- Recognise and support a person with autism who is experiencing stress/anxiety
- Recognise and support sensory needs
- Support the development of social interaction skills
- Provide support with transitions and significant life events
- Understand issues if someone also has a mental health condition
- Support people with autism to gain and maintain employment (where appropriate)

Staff who have a direct impact on and make decisions about an adult with autism’s life (e.g. psychiatrist, needs assessor) should have all of the other skills, as well as for example:

- How autism may present and be diagnosed across lifespan and levels of ability, and relevant pathways and screening tools
- The common difficulties faced by adults with autism and their families
- The impact of autism on personal, social, educational and occupational functioning, and interaction with the social and physical environment
- Current good practice guidelines (e.g. NICE Quality Standard) and local diagnostic and care pathways
- Good practice in post-diagnostic support and intervention

What does this mean?

- It is now much clearer what levels of training professionals need.
- Backed up by professional bodies' curricula

### From Diagnosis to Care and Support

There should be a “clear pathway” from getting a diagnosis, triggering a needs assessment and getting care

- Councils and the NHS have to share information to make this happen

The local NHS should “promote NICE best practice” (NICE Quality Standard)

- 3 months between referral and first appointment for a diagnosis

You cannot be refused a needs assessment because your IQ is too high (i.e. you don't have a learning disability)

Councils must provide preventative services to meet the needs of adults with autism, regardless of whether they are eligible under the Care Act

To plan the right services, councils should have an Autism Lead and a Partnership Board and include people with autism and their families

### **What if the Council or NHS aren't complying with their Autism Act duties?**

If your council or NHS isn't complying...e.g.:

- they don't have a diagnostic pathway
- you have been denied a care assessment
- staff are not trained

#### **As an individual:**

Write a formal complaint letter, make sure you mention their legal duties  
You might consider taking legal action (talk to a lawyer)

#### **As a campaigner:**

Write to your local autism lead  
Contact your local NAS branch if you have one. They might know more, gather evidence for campaigning, or sit on partnership board

#### **Key resources**

If you need advice or more information about the above topics, you can find more online:

- For advice on issues about care and support for someone with autism, visit [www.autism.org.uk/helpline](http://www.autism.org.uk/helpline) or contact 0808 800 4104.
- For advice on issues about care and support for someone with a learning disability, visit [www.mencap.org.uk/mencapdirect](http://www.mencap.org.uk/mencapdirect) or contact 0808 808 1111.
- For advice on issues about care and support for someone who is deafblind, visit <http://www.sense.org.uk/content/advice-and-support> or contact 0300 330 9256.
- For advice on issues about care and support for disabled people and their families, visit <http://www.scope.org.uk/support> or contact 0808 800 3333.