

Last review: October 2016
Next review: October 2018

Know your rights: The Care Act 2014

What is the Care Act?

The Care Act 2014 is the law covering social care. It was written to replace a large number of laws dating back over sixty years, for example the Chronically Sick and Disabled Persons Act 1970 and the Health and Social Care Act 2001. It is the first time carers will be recognised in law in the same way as those they care for.

The Care Act came into force in April 2015 and applies to the whole of England. It mainly covers adults with care and support needs and adult carers, but it does include some provision for adults caring for a disabled child, young carers, and children transitioning to adult services. It is the key piece of law guiding local authorities in their decisions about support for people with a learning disability and their carers.

There are a number of big changes introduced in the Care Act which make it a useful piece of law. However, local authorities may not always be fulfilling their legal duties in practice. The more thoroughly you understand your rights under the Care Act, the more prepared you will be to highlight to your local authority what you are entitled to.

This factsheet explains **some of the key points** of the Act and what they mean for the care and support somebody with a learning disability should receive.

The wellbeing principle

The wellbeing principle underpins all other points in the Care Act. This means all decisions made by local authorities about a person's care and support must be guided by the aim of promoting their wellbeing.

Wellbeing is defined as being made up of lots of things, for example, someone's physical and mental health, their living situation and their ability to take part in work or education. The Care Act changes the law so that local authorities now have **a duty to**

meet needs in a way that contributes to wellbeing, rather than simply having **a duty to provide services**.

For people with a learning disability, the wellbeing principle in the Care Act can help you explain to your local authority why your support to find employment, access day services or socialise with friends should not be cut. These are all things which help your wellbeing.

Prevention, providing information and developing the market

The Care Act introduces a number of **general responsibilities** for local authorities.

Firstly, there is now a strong focus on **preventative services**. This means local authorities have a duty to provide help and information to people which will help them lead a healthy life, stay independent, and avoid needing a lot of care and support. Local authorities must also help to stop carers from reaching crisis point. Many people have welcomed this recognition that **more support should be provided early on**. However, it is unclear the extent to which these preventative measures will be funded.

Secondly, your local authority must also now provide all information in formats that people can understand. For example, the local authority should make sure that all information sent to people with a learning disability is available in **easy read**, such as information about what is available in the area, appointments, assessments, and care and support plans.

Thirdly, local authorities now have to make sure there is **a wide range** of good quality care and support services available locally. This is called developing the market. The effect of this should be that people have more choice about what kind of support they receive, and are able to **'shop around'** for it.

If your local authority is failing to meet these general responsibilities, for example they are failing to give you the required amount of information and choice, you should challenge them.

New National Eligibility Criteria

The Care Act introduces new national minimum eligibility criteria for individuals and carers. This means there is now a national minimum threshold at which disabled and older adults and their carers are entitled to support. Prior to the Care Act, local authorities were free to decide the point at which somebody would become eligible for care and support.

Under the national eligibility criteria, a person's needs will be looked at, and they will be judged to be eligible to receive care and support if their needs mean they cannot achieve certain 'outcomes' in their daily life and this has a significant impact on their wellbeing.

Eligibility must be determined **after** the needs assessment has taken place. If your local authority says you or someone you care for are not eligible for support, but they have not yet assessed your needs, you should challenge this.

When assessing eligibility, the support currently being received by a carer must not be taken into account. The support already being received is only relevant when the care and support plan is being written, which looks at 'how' the person's eligible needs will be met.

Please see our fact sheet, '**Know your rights: Eligibility for care and support**', for more information about how eligibility is assessed.

Personal budgets and direct payments

Most local authorities were already giving personal budgets to people needing care and support prior to the Care Act, but now this has become **a legal duty**. A personal budget is an amount of money given to you by the local authority to pay for your care and support.

You can choose to receive some or all of this money as a '**direct payment**' into a bank account controlled by you or by someone chosen by you (for example, a family member or carer). Or, your personal budget can be managed by the local authority or by an Individual Service Fund (an organisation paid by the local authority to manage your support with your instructions). Your personal budget can be used to pay for a personal assistant, access local day services, pay for short breaks, holidays and transport, or buy equipment to help you in your home.

If you have decided to receive your personal budget as a direct payment, you will have to show the local authority how you have spent the money. Your local authority might cut the amount of money in your personal budget if you do not spend the money given to you for care.

Remember, you might be asked to pay some money towards your personal budget if it is for social care. The amount required will be decided on the basis of a financial assessment.

Please see our fact sheet, '**Know your rights: Personal budgets**', for more information on personal budgets.

Advocacy

The Care Act makes it the duty of the local authority to provide independent advocacy for any individual who might experience **substantial difficulty** in being involved in the assessment process or in developing their care and support plan. Some people with a learning disability may be in this group.

Having an advocate can be useful when preparing for assessments and deciding what level of care and support is required. It is important to remember you have the right to ask for an advocate and this person must be provided and paid for by the local authority. However, the local authority is only obliged to provide an advocate if there is no family member, friend or unpaid carer who can play this role for the individual.

Carers

For the first time in law, the Care Act gives the needs of carers the same **recognition and respect** as those of the people they are caring for. A carer is someone who is not a paid professional, for example a family member or close friend. If a carer has had a carer's assessment and is judged to be eligible for support, they must then receive a care and support plan from their local authority and a personal budget to meet their needs, just like the person they themselves are supporting.

If you are a carer, remember you have a right to ask for an assessment to consider the impact of your caring duties on your wellbeing.

Further information

If you want more information you can ring the **Mencap Direct Helpline**. The Helpline is an advice and information service for people with a learning disability, their families and carers. To speak to the Helpline please call 0808 808 1111.

Mencap also has a number of other factsheets that you may find useful, including on:

- Eligibility
- Personal Budgets
- Charging

To request any of these or a *Don't cut us out!* campaign guide, please contact the Mencap publications team at publications@mencap.org.uk or 0207 696 6902.