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Guidance

## Care Act factsheets

Updated 19 April 2016

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## **Factsheet 1: General responsibilities of local authorities: prevention, information and advice, and shaping the market of care and support services**

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Information, information, information – without it, how can people be truly at the heart of decisions? Information should be available to all regardless of how their care is paid for. There are some things that should be universal – information is one.

### **Public response to the Caring for our future engagement**

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This factsheet describes how the Care Act and supporting guidance place a series of new duties and responsibilities on local authorities about care and support for adults.

#### **What role do local authorities play in care and support?**

Under the Care Act, local authorities have new functions. This is to make sure that people who live in their areas:

- receive services that prevent their care needs from becoming more serious, or delay the impact of their needs
- can get the information and advice they need to make good decisions about care and support
- have a range of provision of high quality, appropriate services to choose from

#### **How does the Act help prevent people developing care and support needs?**

The Care Act helps to improve people's independence and wellbeing. It makes clear that local authorities must provide or arrange services that help prevent people developing needs for care and support or delay people deteriorating such that they would need ongoing care and support.

Local authorities have to consider various factors:

- what services, facilities and resources are already available in the area (for example local voluntary and community groups), and how these might help local people
- identifying people in the local area who might have care and support needs that are not being met
- identifying carers in the area who might have support needs that are not being met

In taking on this role, local authorities need to work with their communities and provide or arrange services that help to keep people well and independent. This should include identifying the local support and resources already available, and helping people to access them.

Local authorities should also provide or arrange a range of services which are aimed at reducing needs and helping people regain skills, for instance after a spell in hospital. They should work with other partners, like the NHS, to think about what types of service local people may need now and in the future.

#### **How does the Act improve information and advice?**

Local authorities need to provide comprehensive information and advice about care and support services in their local area. This is to help people to understand how care and support services work locally, the care and funding options available, and how people can access care and support services.

The Act clearly sets out that they must provide information on:

- what types of care and support are available – e.g. specialised dementia care, befriending services, reablement, personal assistance, residential care etc
- the range of care and support services available to local people, i.e. what local providers offer certain types of services
- what process local people need to use to get care and support that is available
- where local people can find independent financial advice about care and support and help them to access it
- how people can raise concerns about the safety or wellbeing of someone who has care and support needs

Local authorities must also help people to benefit from independent financial advice, so that they can get support to plan and prepare for the future costs of care.

All information and advice must be provided in formats that help people to understand, regardless of their needs. This may include a range of different types of information, and include working with partners to provide information on different services together.

## **How will the Act improve the range and quality of services available?**

The Care Act requires local authorities to help develop a market that delivers a wide range of sustainable high-quality care and support services, that will be available to their communities.

When buying and arranging services, local authorities must consider how they might affect an individual's wellbeing. This makes it clear that local authorities should think about whether their approaches to buying and arranging services support and promote the wellbeing of people receiving those services.

Local authorities should also engage with local providers, to help each other understand what services are likely to be needed in the future, and what new types of support should be developed. To do this, authorities should engage with local people about their needs and aspirations.

A wider range of high quality services will give people more control and help them to make more effective and personalised choices over their care. They should therefore get better care that works for them.

## **Factsheet 2: Who is entitled to public care and support?**

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For far too long people's needs assessments have been driven by the service on offer or that can be provided in a particular area... such an approach fails to recognise the richness and complexity of people's lives and fails to support or promote truly person-centred care.

### **Care Quality Commission**

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This factsheet describes how the Care Act and supporting guidance provide for adults' entitlements to public care and support.

#### **Why do entitlements matter?**

Legal entitlements or duties make clear what local authorities must do, and what people can expect, so that everyone knows where they stand. It is important that the law explains when people will be provided with care and support by the local authority, to ensure that this happens fairly and consistently.

#### **Why did we need to change the law?**

Before the Care Act, people had different entitlements for different types of care and support. These were spread across a number of Acts of Parliament, some over 60 years old. The law was confusing and complex.

We wanted to design a simpler, modern law for 21st Century care and support.

- We wanted to ensure that the law focuses on the needs of people. The old law created responsibilities to provide particular services. That leads to an approach to assessment and support planning that focuses more on services and organisations – the people that provide the care, not the people who receive it. We wanted to change this, so that the person is always at the centre.
- The old law was multi-layered and very complicated. We wanted to clarify it so that people can better understand how the system works, and how decisions about them are made
- To make the law fair and more consistent, we wanted to remove certain anomalies that treated particular groups of people differently. We wanted there to be one route for determining entitlement, which works for all groups of people in all circumstances. We do not want people to be dealt with differently based on the type of service they need or where they receive it.

All of this required some significant changes to the old law.

## **What did the Act do?**

The Act creates a single, consistent route to establishing an entitlement to public care and support for all adults with needs for care and support. It also creates the first ever entitlement to support for carers, on a similar basis (see also factsheet 8). The Act is also clear about the steps that must be followed to work out this entitlement, to help people understand the process. It follows the person's 'journey' in the care and support system. It begins with an assessment of their needs and a decision about whether their needs are eligible, including a financial assessment where necessary. This will determine whether people need to pay for their own care, and in the future will include the new capped costs payment system (see factsheet 6). After this process of assessment is finished, the decision can then be made about whether the adult is entitled to care and support arranged by the local authority.

## **When must the local authority meet a person's care and support needs?**

The Act sets out a new legal duty for an adult's 'eligible needs' to be met by the local authority, subject to their financial circumstances. Their eligible needs are those that are determined after the assessment (see factsheet 3).

The Act says clearly that a person will be entitled to have their needs met when:

- the adult has 'eligible' needs
- the adult is 'ordinarily resident' in the local area (which means their established home is there)
- any of 5 situations apply to them

These are the 5 situations:

- the type of care and support they need is provided free of charge
- the person cannot afford to pay the full cost of their care and support
- the person asks the local authority to meet their needs
- the person does not have mental capacity, and has no one else to arrange care for them
- when the cap on care costs comes into force, their total care and support costs have exceeded the cap.

## **What happens if the local authority must meet their needs?**

The local authority must help the person to make decisions about how they want their needs to be met and prepare a care and support plan (see factsheet 4).

Under the Act, there is more flexibility to focus on what the person needs and what they want to achieve, and to design a package of care and support that suits them. 'Meeting needs' allows for different approaches, so that they can get the right level and type of care and support when they need it.

A person will still be able to receive the same types of care and support as before. If their needs can be best met in a care home, that is what should be arranged.

### **What and when will people have to pay for their care?**

Some types of care and support are provided free of charge but often the local authority will charge a cost. Depending on a person's finances, a local authority may ask an individual to contribute towards the costs of their care (up to and including the full amount).

In cases where the costs of care would reduce a person's income below a set level, a local authority will pay some of the costs to make sure that the person is left with this minimum level of income. This ensures people will still receive the care they need in cases where they have only modest resources.

In any other cases, the adult can still ask the local authority, regardless of their finances, to arrange their care and support for them. It makes it less likely that people who are uncertain about the system or lack confidence to arrange their care do not go without. However, they will still need to pay for their care and support if they have adequate financial resources.

If people are due to pay charges for their care and support, they may be entitled to a 'deferred payment agreement', through which they delay charges, and repay the local authority at a later date.

## **Factsheet 3: Assessing needs and determining eligibility**

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...a move to outcome and needs based assessment would put the individual and their views, needs and wishes at the centre of the work, as the setting of outcomes is both a personal and subjective process.

### **Joseph Rowntree Foundation**

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This factsheet describes how the Act and supporting regulations and guidance set out the process of assessing an adult's needs for care and support, and deciding whether a person is eligible for publicly funded care and support.

### **What is the assessment process?**

An assessment is how a local authority decides whether a person needs care and support to help them live their day-to-day life.

The assessment must be carried out by an appropriately trained assessor, for instance a social worker, who will consider a number of factors, such as:

- the person's needs and how they impact on their wellbeing – for instance, a need for help with getting dressed or support to get to work
- the outcomes that matter to the person – for example, whether they are lonely and want to make new friends
- the person's other circumstances - for example, whether they live alone or whether someone supports them

The aim is to get a full picture of the person and what needs and goals they may have. After carrying out the assessment, the local authority will then consider whether any of the needs identified are eligible for support.

Because not all care needs are met by the State, the local authority uses an eligibility framework to decide which needs are eligible to be met by public care and support.

### **Why do we need to change the law?**

As well as helping councils make decisions, the assessment allows people to express their own wishes and preferences. Talking with people to understand their needs, and how they can meet them, will support them to maintain their independence for longer and make better choices about their care. This is an important process in its own right.

Local authority responsibilities for assessments were previously set out in a number of different laws. These tended to focus on what service should be provided, rather than on what the person actually needs or wants. We want a care and support system built around the individual. We therefore changed, so that assessments focus on what the person wants to achieve. Each local authority previously set its own eligibility threshold based on guidance. This meant that the amount – and type – of care that was provided by the council varied depending on where a person lived.

### **What are the requirements for assessment?**

The Act gives local authorities a duty to carry out a needs assessment in order to determine whether an adult has needs for care and support. The assessment:

- must be provided to all people who appear to need care and support, regardless of their finances or whether the local authority thinks their needs will be eligible
- must be of the adult's needs and how they impact on their wellbeing, and the outcomes they want to achieve
- must be carried out with involvement from the adult and their carer or someone else they nominate. The adult may need an independent advocate provided by the local authority to help them with the assessment process

As part of the process, the authority must consider other things besides services that can contribute to the desired outcomes, and whether any universal preventative services or other services available locally could help them stay well for longer. For example, the local authority may offer the person a period of reablement to reduce needs and regain skills, before completing the assessment.

The regulations which support the Act ensure that the assessment is appropriate and proportionate, so that people have as much contact with the authority as they need. In addition, they require the authority to consider the wider needs of the family of the person (for instance, if there is a young carer).

The regulations will also require that assessors have the appropriate training, and that experts carry out complex assessments such as for people who are deafblind.

If the person agrees and has capacity, they may also carry out a self-assessment, where the person takes the lead in identifying their needs and outcomes. The local authority will still be involved to help support the process, and to be satisfied that the person has identified all of their needs, but the person can take more control.

### **How does the authority determine who has eligible needs?**

After the assessment, the local authority must determine whether the person is eligible for care and support. This is set out in regulations that set the national minimum threshold for eligibility, which will be consistent across England.

Determining eligible needs is important to work out, as the local authority must meet the adult's eligible needs for care and support (see factsheet 2). The person will have eligible needs if they meet all of the following:

- they have care and support needs as a result of a physical or a mental condition
- because of those needs, they cannot achieve two or more of the outcomes specified
- as a result, there is a significant impact on their wellbeing

The outcomes are specified in the regulations, and include people's day-to-day outcomes such as dressing maintaining personal relationships, and working or going to school.

Where the person has eligible needs, and wants the local authority's help to meet them, then the authority will discuss the person's care and support plan with them (see factsheet 4). In all cases, the local authority must give people advice and information about what support is available in the community to help them.

The local authority must provide the adult with a copy of their assessment and their eligibility determination.

This factsheet relates only to adults who need care and support. Factsheet 8 explains the equivalent provisions for carers.

## Factsheet 4: Personalising care and support planning

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It is essential that personal budgets are recognised [in the law]. To leave this significant policy development without statutory basis would leave local authorities uncertain of their legal obligations and individuals uncertain of their entitlements.

### The Law Commission

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This factsheet describes how the Care Act and supporting regulations and guidance give people maximum control over how their needs are met.

### What is care and support planning?

Everyone's needs for care and support are different, and needs can be met in many different ways.

The care and support planning process is there to help decide the best way to meet the person's needs. It considers a number of different things, such as what needs the person has, what they want to achieve, what they can do by themselves or with the support they already have, and what types of care and support might be available to help them in the local area.

The planning process takes place with the local authority and the person, any carer they have and any other person they ask the authority to involve. Where the person lacks the capacity to ask, any person who appears to the authority to be interested in the adult's welfare should be involved. This process will decide how to meet the needs of the person, and the local authority must do everything it reasonably can to reach agreement with the person as to how their needs should be met.

The local authority must produce a plan that sets out the detail of what was agreed. As part of the planning process, the local authority will tell the person about their personal budget. This is the amount of money that the local authority has worked out it will cost to arrange the necessary care and support for that person.

This includes any amount that the local authority is going to pay itself towards those costs (which might range from all, to none of the total). The personal budget helps the adult to decide how much control they want to have over arranging their own care and support, by seeing how much money is available to buy the care they need.

Using the information from the personal budget, the person can ask the local authority for a direct payment.

A direct payment is a payment of money from the local authority to either the person needing care and support, or to someone else acting on their behalf, to pay for the cost of arranging all or part of their own support. The local authority could make a direct payment instead of arranging or providing any services itself, if the adult asks them to do so. This ensures the adult can take full control over their own care.

The local authority must provide a direct payment to someone who meets the conditions in the Act and regulations.

### **Why do we need to change the law?**

Before the Care Act, of all the things above, only direct payments had a place in law. Care and support planning and personal budgets, had previously only been set out in guidance.

We wanted the law to focus on the person and their needs, their choices and what they want to achieve. It should put them in control of their lives and the care and support they receive. The care and support planning process is the way of making this happen. It provides people who use services, and carers, with clear legal rights to a care and support plan.

Personal budgets also needed to be included in the law as they are important for making care and support personalised. If they were not in the law, it would be more difficult to offer them to everyone. While some local authorities were already making great progress in this area, legislation was needed to make it happen for everyone eligible for statutory support, wherever they live in England.

### **What does the Care Act do?**

The Act sets out when the local authority has a responsibility to meet someone's care and support needs. It also sets out how it can do so even if it does not have to. The Act also says what must happen next to help the person make decisions about how their needs should be met.

The Act gives local authorities a new legal responsibility to provide a care and support plan (or a support plan in the case of a carer).

For the first time, the Act provides people with a legal entitlement to a personal budget, which is an important part of the care and support plan, or support plan. The personal budget must be included in every plan, unless the person is only receiving intermediate care or reablement support to meet their identified needs.

This adds to a person's right to ask for a direct payment to meet some or all of their needs. Provided that the direct payment is used to meet the needs identified in the plan, the person should have freedom over how the money is spent.

Even when an assessment says that someone does not have needs that the local authority should meet, the local authority must advise people about what needs they do have, and how to meet them or prevent further needs from developing.

The person concerned must be involved in developing their plan. The local authority will have to do everything it reasonably can to agree the plan with them.

It must also provide an independent advocate to help the person take part in the planning and review process, if that person would otherwise have substantial difficulty in doing so.

Completing the planning process and putting in place care and support arrangements does not mean the end of the local authority's responsibilities. The local authority has a legal responsibility to review the plan to make sure that the adult's needs and outcomes continue to be met over time. If anything has changed, the authority

must carry out a new assessment. The person themselves also has the right to request a review of their care and support plan, if they wish.

## **Factsheet 5: Charging and financial assessments**

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All councils should have transparent charging policies... service users, carers and the public should understand the purpose of local charging policies and the criteria used to determine levels of charging for particular services.

### **Standing Commission on Carers**

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This factsheet describes how local authorities assess what people can afford to pay for their care and support under the Care Act.

#### **What is the charging process?**

Care and support is not a free service unlike the NHS. People have always had to pay something towards the cost of their care and support. Whilst some types of care and support are provided free, many types will be subject to a charge.

People will only be asked to pay what they can afford. Sometimes the person will pay the full cost and sometimes the cost will be shared between the person and their local authority.

To decide what a person can afford to pay, a local authority will carry out a financial assessment. The local authority will consider the person's income and any assets they own, like a house or other investments. The local authority will then calculate how much the person can afford to pay towards their care and support costs.

Sometimes a homeowner may want to consider a 'deferred payment agreement' with the local authority. This is an arrangement whereby the person agrees, with their local authority, to pay some of their fees at a later date. This means they should not be forced to sell their home during their lifetime, to pay for their care. The person usually repays the local authority from the sale of their property or it is repaid from their estate.

#### **When can a local authority charge for care and support?**

First, a local authority will assess someone and decide whether they have eligible care needs. The local authority will then work with the person to consider what types of support might be provided to meet their needs.

Not all types of care and support involve a cost for the person. Whilst the Act gives local authorities the power to charge for care and support, they may not charge for services which the regulations say must always be free, for example reablement services or equipment and minor adaptations to the home.

Additionally, from 2020, where the individual has reached the cap on care costs (see factsheet 6) the local authority may not charge towards the cost of meeting their care and support needs.

#### **How does the local authority decide what charges are due?**

If the local authority thinks that the person needs a service for which a charge can be made, it must decide what the person can afford to pay. The rules on how this financial assessment should be carried out are set in the regulations and guidance so that people's finances are assessed in a consistent and transparent way.

The financial assessment will consider what sources of income a person has and what other assets they hold. There are different rules for the treatment of income depending on whether the person is expected to need care in a care home, or other settings.

This financial assessment will ensure that when an adult contributes towards their care and support they must still be left with a certain amount of money for themselves after the local authority has charged them.

Sometimes, the local authority may only make a small charge for a particular service and it would not be practical to carry out a detailed financial assessment. In these cases, the local authority may carry out a 'light-touch' assessment to determine that the person can afford the charge, and will not need to follow the full detail and rules.

Where a local authority agrees to arrange care and support for a person who can afford to pay the full costs of their care the person may ask the local authority to carry out a 'light-touch' financial assessment, for example if they do not want to undergo the detailed process. If the local authority is satisfied that the person will continue to be able to afford the cost of their care, they may agree to this.

After the financial assessment, the local authority will tell the person whether they need to pay for all or some of their care costs.

### **When can a person defer care charges?**

Under a 'deferred payment agreement' people who own their own home may be able to make an arrangement whereby they do not have to sell their home, during their lifetime, to pay their care home costs. Instead, the local authority will pay the costs, and recover the money that the person owes, plus interest, at a later date.

Local authorities are required to offer a deferred payment agreement to anyone meeting the criteria set out in regulations. Local authorities are able to charge interest on these payment arrangements, so that they can cover their own costs of offering them.

## **Factsheet 6: Reforming how people pay for their care and support**

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For the first time, individual liabilities will be limited, protecting people against the worst aspects of the current care lottery. The increase in the upper threshold for means-tested support...is also a boost for those with modest resources who are most heavily penalised under the current system. The combined effect of the cap and a higher means test threshold will see more people receive public funding.

### **The King's Fund**

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This factsheet describes how the cap on care costs system and the extension to means-tested financial support for care costs will work from April 2020. These reforms aim to end the unfairness and fear caused by unlimited care costs and provide more people with financial support from the State towards the costs of their care and support.

### **Why are we changing the law?**

Unlike health, care and support is not free at the point of use. Everyone has to contribute something towards their care costs, and this will continue in the future.

Currently, only people with assets of less than £23,250 and low incomes receive any help from the State with their care and support costs. People who develop long-term, severe care and support needs can therefore face substantial costs before they can get financial support from the State. We know that 1 in 8 of us will face the highest costs but no-one knows which of us that will be.

## **What are the funding reforms?**

These reforms aim to give everyone the peace of mind that they will be protected from catastrophic care costs by means of a cap on care costs. The cap will limit the amount people have to pay towards the cost of their eligible care and support over their lifetime. An extension to means-tested financial support will work in conjunction with the cap so that people retain more of their assets, and that more people will receive help with the costs of their care from the State.

## **What do the Act and Regulations do?**

The Care Act established the legal framework for the reforms. Regulations made under the Act will come into effect in April 2020 to implement the funding reforms outlined in this factsheet.

### **Cap on care costs**

From April 2020, there will be a cap limiting the amount people will have to pay for their care and support. The level of the cap will be set out in regulations.

### **How the cap on care costs works**

#### **a) Progressing towards the cap**

Progress will be based on the cost to the local authority of meeting a person's eligible care and support needs.

For people in a care home a contribution to daily living costs (see below) will be deducted from that cost. The costs will be set out in a person's personal budget if they are receiving local authority support or, if they are meeting the costs themselves, their independent personal budget (IPB).

An IPB reflects the amount it would cost the local authority to meet a person's eligible care and support needs if it was required to do so.

#### **b) Daily living costs**

Wherever we live, we face the same basic costs for things such as rent, food and utilities, irrespective of whether we have a care and support need. As such, these costs will not count towards the cap.

To ensure fairness between people receiving care in different settings, a person in a care home will continue to contribute towards these costs. As it is often difficult to separate the costs of care and support costs and daily living costs for a person in a care home, a notional amount for daily living costs will be set in the regulations.

#### **c) Keeping track**

Everyone with eligible needs will have a Care Account that will record their progress towards the cap. This will be held by the local authority and will set out the rate at which a person is progressing and how much they have accrued towards the total. Local authorities will send statements at least annually.

#### **d) Reaching the cap**

When a person reaches the cap the local authority will have to meet the person's eligible care and support needs. Everyone will continue to be responsible for paying their daily living costs after they reach the cap. Anyone paying a top-up fee will continue to be responsible for making these payments after they reach the cap.

### **Extension to means-tested financial support**

The amount that the State will pay towards someone's care and support costs will continue to be means tested dependent on the person's assets and income.

The intention is that from April 2020, the upper and lower capital limits for means tested support will be increased so that more people will become eligible for local authority financial support.

### **Extending choice of accommodation**

People who receive local authority financial support and whose care and support needs have been determined to be best met in a care home may choose more expensive accommodation than the amount set in their personal budget.

The additional costs associated with such choices (known as 'top-up' payments) must be met by the person themselves ('first party top ups') or a third party such as a family member or friend, under a written agreement with the local authority. Currently, there are restrictions on the circumstances in which people can make first party top-up payments.

In order to facilitate choice, the regulations will lift the restrictions on first party top-ups in April 2020. However, the decision to make top-up payments will remain completely optional and will, as now, be subject to the person making the payments being willing and able to do so and a written agreement with the local authority.

## **Factsheet 7: Protecting adults from abuse or neglect**

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The existing legal framework for adult protection is neither systematic nor coordinated, reflecting sporadic development of safeguarding policy over the last 25 years.

### **Commission for Social Care Inspection**

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This factsheet is about how the Act, for the first time, sets out a clear legal framework for how local authorities and other parts of the health and care system should protect adults at risk of abuse or neglect.

### **What is safeguarding?**

'Adult safeguarding' is working with adults with care and support needs to keep them safe from abuse or neglect. It is an important part of what many public services do, and a key responsibility of local authorities.

Safeguarding is aimed at people with care and support needs who may be in vulnerable circumstances and at risk of abuse or neglect. In these cases, local services must work together to spot those at risk and take steps to protect them.

### **Why do we need to change the law?**

Although local authorities have been responsible for safeguarding for many years, there has never been a clear set of laws behind it. As a result, it has often been very unclear who is responsible for what, in practice.

The Act aims to put this right by creating a legal framework so key organisations and individuals with responsibilities for adult safeguarding can agree on how they must work together and what roles they must play to keep adults at risk safe.

## What does the Act do?

### a) Safeguarding adults boards

Safeguarding is everyone's business, and it is important that organisations work together to protect people who need help and support. Yet one of the biggest challenges is how to bring together the huge number of teams and organisations involved in keeping people safe.

That's why the Act requires local authorities to set up a safeguarding adults board (SAB) in their area, giving these boards a clear basis in law for the first time.

The Act says that the SAB must:

- include the local authority, the NHS and the police, who should meet regularly to discuss and act upon local safeguarding issues
- develop shared plans for safeguarding, working with local people to decide how best to protect adults in vulnerable situations
- publish this safeguarding plan and report to the public annually on its progress, so that different organisations can make sure they are working together in the best way

### b) Safeguarding enquiries by local authorities

The Act also requires local authorities to make enquires, or ask others to make enquiries, when they think an adult with care and support needs may be at risk of abuse or neglect in their area and to find out what, if any, action may be needed. This applies whether or not the authority is actually providing any care and support services to that adult.

The enquiry may lead to a number of outcomes, depending on the circumstances, including to prosecution if abuse or neglect is proven. In other cases, the risk of abuse may be tackled, but the adult may have other care and support needs which require different services, and may lead to a needs assessment or review of an existing care and support plan.

### c) Safeguarding adult reviews

When there is any failure in safeguarding, the results can be severe and tragic and therefore demand a strong response.

That is why the Act says that SABs must arrange a **safeguarding adults review** in some circumstances – for instance, if an adult with care and support needs dies as a result of abuse or neglect and there is concern about how one of the members of the SAB acted.

The reviews are about learning lessons for the future. They will make sure SABs get the full picture of what went wrong, so that all organisations involved can improve as a result.

### d) Independent advocacy

The local authority will arrange for an independent advocate to represent and support a person who is the subject of a **safeguarding enquiry** or a **safeguarding adult review**, if they need help to understand and take part in the enquiry or review and to express their views, wishes, or feelings.

## **e) Supply of information**

It is important that organisations share information related to abuse or neglect with SABs. Not doing so could prevent them from being able to tackle problems quickly and learn lessons to prevent them happening again.

## **Factsheet 8: the law for carers**

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The Care Bill in many respects marks a quiet revolution in our attitudes towards, and expectations of, carers. At last, carers will be given the same recognition, respect and parity of esteem with those they support. Historically, many carers have felt that their roles and their own well-being have been undervalued and under-supported. Now we have a once in a lifetime opportunity to be truly acknowledged and valued as expert partners in care.

### **Dame Philippa Russell, Chair, Standing Commission on Carers**

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For the first time, carers will be recognised in the law in the same way as those they care for. This factsheet describes how the Care Act sets out carers' legal rights to assessments and support.

#### **Who is a carer?**

A carer is someone who helps another person, usually a relative or friend, in their day-to-day life. This is not the same as someone who provides care professionally, or through a voluntary organisation.

The Care Act relates mostly to adult carers – people over 18 who are caring for another adult. This is because young carers (aged under 18) and adults who care for disabled children can be assessed and supported under children's law.

However, the regulations under the Act allow us to make rules about looking at family circumstances when assessing an adult's need for care, which means, for example, making sure that the position of a young carer within a family would not be overlooked. The Act also makes new rules about working with young carers, or adult carers of disabled children, to plan an effective and timely move to adult care and support (see factsheet 3 and factsheet 11).

#### **Why do we need to change the law?**

The existing law treats carers differently from the people they care for. It has been developed bit by bit and mixes up rights for carers of different ages. It is complicated, and makes it difficult for carers to understand how to get support themselves.

Currently, carers do not have a legal right to receive support, although local authorities can provide support at their discretion. This means that access to assessment and the range of support on offer can vary considerably.

#### **What does the Care Act do?**

##### **a) Assessments**

The Act gives local authorities a responsibility to assess a carer's needs for support, where the carer appears to have such needs. This replaces the existing law, which says that the carer must be providing 'a substantial amount of care on a regular basis' in order to qualify for an assessment. This will mean more carers are able to have an assessment, comparable to the right of the people they care for.

The local authority will assess whether the carer has needs and what those needs may be. This assessment will consider the impact of caring on the carer. It will also consider the things that a carer wants to achieve in their own day-to-day life. It must also consider other important issues, such as whether the carer is able or willing to carry on caring, whether they work or want to work, and whether they want to study or do more socially.

If both the carer and the person they care for agree, a combined assessment of both their needs can be undertaken.

## **b) Eligibility**

When the assessment is complete, the local authority must decide whether the carer's needs are 'eligible' for support from the local authority. This approach is similar to that used for adults with care and support needs (see factsheet 3). In the case of carers, eligibility depends on the carer's situation. The carer will be entitled to support if:

- they are assessed as having needs that meet the eligibility criteria
- the person they care for lives in the local authority area (which means their established home is in that local authority area)

If there is a charge (as there sometimes may be, as explained below) such charge must be accepted by the carer (or the adult being cared for if it falls to them).

## **c) Support planning**

The local authority and the carer will agree a support plan, which sets out how the carer's needs will be met. This might include help with housework, buying a laptop to keep in touch with family and friends, or becoming a member of a gym so that the carer can look after their own health.

It may be that the best way to meet a carer's needs is to provide care and support directly to the person that they care for, for example, by providing replacement care to allow the carer to take a break. It is possible to do this as long as the person needing care agrees.

## **d) Charging and financial assessment**

In most cases local authorities do not charge for providing support to carers, in recognition of the valuable contribution that carers make to their local community. However, this is something that the local authority can decide. If the local authority does decide to charge a carer for providing them with support, it must carry out a financial assessment to decide whether the carer can afford to pay.

If supporting a carer involves providing care to the person being cared for, and the local authority chooses to charge for that type of care, then the authority must carry out a financial assessment of the person who is being cared for. This is because the care would be provided directly to that adult, and not to the carer. The Act makes it clear that in such cases, the carer cannot be charged. For more information about charging (see factsheet 5).

## **e) Personal budgets**

Carers should receive a personal budget, which is a statement showing the cost of meeting their needs, as part of their support plan. It will include the amount the carer will pay, if any, and the amount the local authority is going to pay (see factsheet 4). Carers have a right to request that the local authority meets some or all of such needs by giving them a direct payment, which will give them control over how their support is provided.

## **f) Young carers**

The Care Act does not deal with assessment of people under the age of 18 who care for others. However, they can be supported under the law relating to children. The Children and Families Act gives young carers (and parent carers) similar rights to assessment as other carers have under the Care Act.

Regulations under the Care Act set out how assessments of adults must be carried out to ensure the need of the whole family are considered. This could include assessing what an adult needs to enable them to fulfil their parental responsibilities towards their children, or to ensure that young people do not undertake inappropriate caring responsibilities.

## **g) Adults caring for disabled children**

An adult caring for a disabled child can get support through children's services. This is usually the best way to meet their needs and so they are not covered by this Act. However, there is provision in the Act for an adult carer of a disabled child to ask for an assessment of their caring needs in advance of the child reaching 18. Where a local authority carries out such an assessment, it has the power to provide support to the carer even though they are caring for a child not an adult. This would, for example, enable a local authority to provide support that is available through an adult carers' centre.

## **h) Transition to adult services**

The Act says that adult care and support needs to be involved in planning the support a young carer may need once they reach 18 (see factsheet 11). This also applies to adult carers of children where it appears likely that the adult carer will have needs for support after the child turns.

## **Factsheet 9: Continuity of care when moving between areas**

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Many disabled and older people can't consider moving to another area because they can't be sure that they will get equivalent levels of care and support in the new area.

### **Disability Rights UK**

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This factsheet describes how the Act supports people to move between local authority areas in England, without suffering a gap in the care they need when they arrive in the new area.

#### **What is 'continuity of care'?**

'Continuity' means making sure that, when an adult who is receiving care and support in one area of England moves home, they will continue to receive care on the day of their arrival in the new area. This means that there should be no gap in care and support when people choose to move.

#### **Why do we need to change the law?**

People with care and support needs will sometimes want to move to a new area, just like anyone else – for instance, to get a new job, or to be closer to family.

The law previously did not provide protection for people who want to move to a different area. People often say that this made them less likely to move, because they were worried that they might lose their care and support in the new area.

#### **What does the Act do?**

The Act describes a process to be followed so that local authorities know when someone wants to move areas, and what must happen to make sure that their needs are met when they arrive in the new area. This applies in a number of circumstances:

- an adult is receiving care and support from one local authority, and wants to move to a new area
- an adult is receiving care in a type of accommodation (e.g. a care home), which is organised by a different local authority
- to the one where the accommodation is located. The person wants to leave the care home but stay in the local area; and
- from financial year 2020 to 2021, an adult is arranging their own care and support, but has a 'care account' because the costs of meeting their eligible needs count towards the cap on care costs (see factsheet 6)

## Notifying before moving

In any of these circumstances, the adult (or someone on their behalf) must tell the local authority where they plan to move (the 'second authority') of their intentions.

After the second local authority has been informed, and it is satisfied that the intention to move is genuine, it must then inform the 'first authority'. The 'first authority' is the local authority where the adult is currently living, or which is responsible for their care and support at that time.

The second authority may take steps to make sure that the person wants to move to their area, for instance, by speaking to them about their intentions.

## Sharing information

When the first authority is informed that the adult is moving, it must do a number of things:

- It must provide a copy of the adult's care and support plan, so that the second local authority knows what the adult's needs are

In the future:

- it must provide a copy of the 'care account', if there is one
- If the adult has been arranging their own care and support, it must provide a copy of the 'independent personal budget', as well as the most recent assessment
- It must also provide any other information that the second authority requests, such as their financial assessment

If the adult has a carer who will continue to care for the adult after the move, the first authority must also provide a copy of the carer's support plan.

When it receives this information, the second authority must carry out its own assessment of the adult's needs. If a carer is moving with the adult, then the second authority must also assess the needs of the carer.

Both assessments can take place before the adult moves to the new area, to help ensure that the right care and support is in place when they arrive.

Adults' needs may change when they move home. For instance, if they are nearer to family, they may have more sources of support. Alternatively, being in a new place may mean that they have new needs. It is important that the new local authority assesses them, so that the person receives the right care and support for their needs.

If the second authority finds any needs which are different to those identified by the first authority (and in the care and support plan or most recent assessment provided), it must explain in writing why that is the case.

The first authority must keep in contact with the second authority to keep track of progress on putting services in place, and it must keep the person informed about the contact and involve them in this part of the process.

## **The day of arrival**

The above assessments should mean that the second authority will know about the adult's needs before they arrive and will have services in place for the day of the move.

If on the day of the move the local authority has not carried out the assessments, for example because it wants to assess the person in their new home, or if they have not yet put in place care and support, then the 'continuity duty' is triggered.

This requires the second authority to meet any of the needs that were being met by the previous (first) authority, from the day that the person arrives in the new area. (This also applies to the needs of any carer who will continue to care for the adult after the move). The second authority will use the information shared in the care and support plan or recent assessment to decide what services to put in place to meet those needs.

The continuity duty continues until the second authority has carried out its own assessment and put in place all necessary care and support on the basis of that assessment. This should ensure that that people won't experience any gap in their care.

## **Factsheet 10: Market oversight and provider failure**

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Ensuring continuity of care should care businesses fail and there be a risk of services stopping.

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This factsheet describes how the Act introduced a regime to oversee the financial stability of the most hard-to-replace care providers, and to ensure people's care is not interrupted if any of these providers financially fail and services stop. It also describes the responsibilities of a local authority if a local care provider fails.

### **What happens when a care provider fails?**

There is a diverse market for care services in England. Public, private and voluntary sector organisations can all provide these services.

As is the case in any market, providers may leave from time to time, sometimes because they have failed financially. Their care services may well be sold to or taken over by another provider. This process is usually managed in an orderly way that does not cause disruption for the people receiving care. However, there can on occasion be disorderly failures, which happen quickly or with little warning and which can threaten the continuity of services for the people who need them and cause great anxiety.

### **What was the problem with the old system?**

Prior to the Care Act, the laws dated from 1948, when care was provided and managed very differently. There are now many large care providers that serve much of England. A diverse number of public, private and voluntary sector organisations have grown to provide good quality care to the population.

When a large, national or specialist care provider fails, it may impact on numerous local authorities. This might create problems for people receiving care and support from that provider if the situation is not well-managed.

When a provider that provides care to many people fails, a local authority might find it difficult to make any necessary alternative care arrangements.

Previously, there was no formal system in place for checking how well a care provider was managing its own finances. This meant there was no 'early warning' that this could become an issue, nor anything in place to help resolve the problems it might cause.

The failure in 2011 of Southern Cross, a major care provider, highlighted these issues. It is unacceptable for people to be left without the care services they need. The interruption of care services, or the worry that this might happen, can affect people's wellbeing and cause stress to them, their families, friends and carers.

## What does the Act do?

### a) Managing provider failure locally

The Act gives local authorities clear legal responsibilities where a care provider fails. It makes it clear that local authorities have a temporary duty to ensure that the needs of people continue to be met should their care provider become unable to continue to provide care because of business failure, no matter what type of care they are receiving. Local authorities have responsibilities to all people receiving care, regardless of whether they or the local authority pay for that care, or whether it is funded in any other way.

Should a care provider fail financially and services cease, the local authority must take steps to ensure that all people receiving care do not experience a gap in the services they need. For some people, that may only require the provision of information and advice on alternative services available locally, to help them choose a new provider.

For others, it may require active arrangement of care with a different provider for a period of time, to ensure continuity. The steps will depend on the circumstances of the provider failure and the nature of support the person wants from the authority.

This duty applies temporarily, until the local authority is satisfied that the each person's needs will be met by a new provider or in a different way. The local authority may make a charge for arranging care and support in these situations.

### b) Market oversight

The Act established a new role for the Care Quality Commission (CQC), the independent regulator for health and care services in England. The CQC now has a responsibility for assessing the financial sustainability of certain 'hard-to-replace' care providers.

These are care providers which, because of their size, concentration or specialism, would be difficult to replace were they to fail and so where the risks posed by failure would be highest for individual local authorities.

To decide which providers CQC should oversee, regulations include criteria which set out which providers should be included in the regime. These criteria determine whether a provider would be 'hard to replace'; they do not reflect whether or not a provider is likely to fail.

There are different criteria for care home operators and for other providers of care and support. Should it be needed, regulations can also specify particular providers to be included in the regime, irrespective of whether they would meet the entry criteria.

To assess financial sustainability, the Act gives the CQC the power to request information from any provider in the regime. Regulations also allow CQC to request information from other companies in the same group, where this is relevant to assessing the finances of the provider itself.

The Act allows CQC to request that a provider which it judges to be in financial difficulty should develop a sustainability plan and, where needed, arrange an independent business review.

This is intended to help the care provider to remain financially sustainable, so that the care it provides to people is not disrupted.

CQC's role is to oversee the provider's plans to remedy the situation and, if failure is judged to be likely, to inform the local authorities affected, to help them to deliver their duties to ensure continuing care to individuals.

The CQC's aim is not to stop providers failing at all costs or to bail out providers in difficulty or interfere with any commercial discussions surrounding the likely failure.

Further details about how market oversight operates (<https://www.cqc.org.uk/content/market-oversight-adult-social-care>) can be found on the Care Quality Commission's website.

## **Factsheet 11: Transition for children to adult care and support**

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Services at transition should be aimed at moving a person into work/adult life in such a way as to promote their independence and so reduce their long term needs for care and support.

### **Care and Support Alliance**

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This factsheet describes how the Care Act supports people moving from children's to adult care and support services.

We know that the transition to adulthood is a time when young people and their families are thinking about their aspirations for the future. If people are likely to have care and support needs when they are 18, they need information and advice so that they can make the necessary plans.

### **Planning for transition**

The Act says that if a child, young carer or an adult caring for a child (a 'child's carer') is likely to have needs when they, or the child they care for, turns 18, the local authority must assess them if it considers there is 'significant benefit' to the individual in doing so. This is regardless of whether the child or individual currently receives any services.

When either a child or a young carer approaches their 18th birthday, they may ask for an assessment. A parent or carer may also ask for an assessment as the child they are caring for approaches 18.

As in all assessments, local authorities will need to consider the needs of the person, what needs they are likely to have when they (or the child they care for) turn 18, and the outcomes they want to achieve in life. They should consider what types of adult care and support might be of benefit at that point, and also consider whether other options beyond formal services might help the individual achieve their desired outcomes.

### **What information will someone receive?**

The Act says that when an assessment is carried out, information should be given about whether the young person, child's carer or young carer is likely to have eligible needs for care and support when they turn 18 (see factsheet 3). The person should receive advice and information about what can be done to meet or reduce the needs they are likely to have, as well as what they can do to stay well, and prevent or delay the development of future needs.

This information will give young people, child's carers and young carers an indication of the sort of support they can expect. This will remove some of the uncertainty caused by having to wait and see what will happen when they turn 18.

If a person asks for an assessment but the local authority decides not to carry out an assessment, it must explain in writing why it has reached that decision. In any event, it must also provide information and advice about what the person can do to prevent or delay the development of care and support needs.

## **When does planning start?**

The Act does not say that the child or young person has to be a certain age to be able to ask for an assessment. It says that local authorities must consider, in all cases, whether there would be a 'significant benefit' to the individual in doing an assessment.

This means the local authority is able to take each individual's circumstances into account when deciding whether to assess them. This is instead of having a blanket rule that means everyone has to be assessed at the same age. This flexibility recognises that the best time to plan the move to adult services will be different for each person.

## **Ensuring there is no gap in services**

When a local authority assesses a child (including a young carer) who is receiving support under legislation relating to children's services, the Act requires them to continue providing him or her with that support through the assessment process.

This will continue until adult care and support is in place to take over – or until it is clear after the assessment that adult care and support does not need to be provided. These changes will mean there is no 'cliff-edge' where someone reaching the age of 18 who is already receiving support will suddenly find themselves without the care and support they need at the point of becoming an adult.

## **Working with other organisations**

A successful transition to adult care and support needs the young person, their families and professionals to work together. This is crucial. The Act gives local authorities a legal responsibility to cooperate, and to ensure that all the correct people work together to get the transition right.

The Act makes clear that the local authority can combine any of these 'transition' assessments with any other assessment being carried out for some other person (provided all parties agree). If an external organisation (such as a hospital) is carrying out an assessment of the individual or a relevant person, for example, the individual's carer or someone the individual cares for, around the same time as the local authority's assessment, the local authority can carry out that assessment jointly with the other organisation or on behalf of the other organisation. This allows for sensible and flexible combinations of assessments, which is in everyone's interest. Transition assessments could also potentially become part of a child or young person's Education, Health and Care plan (see below).

The Care Act (and the special educational needs provisions in the Children and Families Act) requires that there is cooperation within and between local authorities to ensure that the necessary people cooperate, that the right information and advice are available and that assessments can be carried out jointly.

## **The Children and Families Act**

The Children and Families Act creates a new 'birth-to-25 years' Education, Health and Care Plan (EHC) for children and young people with special educational needs, and offers families personal budgets so that they have more control over the type of support they get. In some cases, where a person is over 18, the 'Care' part of the EHC plan will be provided for by adult care and support, under the Care Act.

The Children and Families Act also improves cooperation between all the services that support children with special educational needs and their families. This requires local authorities to involve children, young people and parents in reviewing and developing care for those with special educational needs. Local authorities will

also need to publish information about what relevant support can be offered locally.

## **Factsheet 12: Prisoners and people in resident in approved premises**

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The difficulties that older prisoners face in the physical environment have been exacerbated by social care that is described variously as variable, sparse and non-existent; there has been a deplorable absence of basic personal social care, for example for prisoners with serious mobility problems, and no one seems sure who has been responsible for its provision.

### **House of Commons Justice Committee, Fifth Report of Session 2013/14, Older Prisoners**

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This factsheet describes how the Act sets out local authorities' responsibilities for arranging and funding services to meet the care and support needs of adults who are detained in prison or who are resident in approved premises.

#### **Context**

A number of the people who are in prison or living in approved premises on licence will have a need for care and support.

Social care services are important for people in the criminal justice system who have care and support needs. It supports their rehabilitation and may positively impact on the likelihood of reoffending and the person's ability to rebuild their lives on release.

#### **Why have we changed the law?**

Before the Care Act came into law, it was not clear about whether or which local authorities were responsible for providing care and support for prisoners and people living in approved premises. This meant that very few prisoners with care and support needs were having these needs properly assessed or met in an effective way.

For prisoners who have care and support needs before they enter prison, services can sometimes stop once they enter prison. Other prisoners may not have had their needs identified before entering prison or may develop care and support needs during their sentence. Not receiving care and support may impair their ability to take part in meaningful activities, impact negatively on rehabilitation and increase the risk of their reoffending on release.

Reports by Her Majesty's Chief Inspector of Prisons, the Prison and Probation Ombudsman and the Prison Reform Trust have all criticised the quality of social care provision in prisons.

#### **What does the Care Act do?**

The Act makes clear where the responsibility lies for assessing the care and support needs of prisoners and people in approved premises, and providing care and support where those needs meet eligibility criteria.

The Act states that it will be the local authority where the prison or approved premises is located which is responsible. This means assessing whether someone has care and support needs and what those needs may be. After the assessment, the local authority must then determine whether the person is eligible for care and support using the same eligibility framework used for people living in the community. If they are assessed as having needs that meet the eligibility criteria, the local authority will meet those needs.

Just like people living in the community, prisoners and people in approved premises will have to pay part or the full cost of their care, if they can afford to do so.

Prisoners frequently transfer between prisons due to the progression of their sentence, changes in security category, or in preparation for release. If a prisoner is receiving care and support, the Act will ensure that there will be continuity of care in the next prison.

People leaving prison often experience difficulties in preparing for release. The local authority where the prisoner is located may carry out an assessment of the care and support they will need to support their release into the community. The Act will ensure that there will be continuity of care on release.

Whilst the Act will ensure that prisoners and people in approved premises will be entitled to care and support largely in the same way as people in the community, there will be instances where the care and support legislation will not apply to them.

Prisoners will not have the same choice in arranging their care as people not in prison and will not be entitled to direct payments for their care and support. However, this exclusion does not apply to those who have not been convicted of an offence, for example some people in bail accommodation.

Prisoners will not be able to express a preference for particular accommodation except when this is being arranged for after their release from prison or approved premises.

Some prisoners provide care for other prisoners, helping them in their day-to-day life. The Act gives local authorities a responsibility to assess a carer's own needs for support. However, the Care Act clarifies that people will not be regarded as carers if they provide care as part of voluntary or paid work - almost all care provided by prisoners is expected to fall within these exclusions.

Local authorities will not have to protect the property of adults in prison or approved premises with care and support needs.

Prisons and approved premises will still be responsible for the safety of their detainees. This means that Safeguarding Adults Boards do not have a duty to carry out enquiries or reviews where a prisoner with care and support needs may be, or have been, at risk of abuse and neglect. Safeguarding Adults Boards can provide advice and assistance on safeguarding to prison governors and other officials and can invite prison staff to be members.

For further information, see also:

- Factsheet 3: Assessment and Eligibility
- Factsheet 5: Charging and Financial Assessments
- Factsheet 9: Continuity of Care and Moving Between Areas

## **Factsheet 13: Appeals Policy Proposals**

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The Local Government Association argued that the failure to address issues relating to the ways in which people might seek redress 'is an omission'. Similarly, Hull City Council noted that 'there appears to be a lack of potential dispute resolution within the prescribed legislation' and suggested that this can lead to 'costly challenges'.

### **Law Commission consultation on Care and Support, March 2011**

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This factsheet describes how our appeals policy proposals set out the process of appealing certain decisions taken by local authorities in relation to an individual under Part 1 of the Care Act 2014.

### **Why have an appeals system?**

The lack of a formalised appeal structure within care and support was highlighted in consultation responses as well as in debates when the Care Act 2014 progressed through Parliament.

The government acted and amended the Care Act to include powers to introduce an appeals system under which decisions taken by a local authority under Part 1 of the Care Act 2014 might be challenged.

Care and Support decisions have a large impact on people's quality of life. It is therefore important that where people feel an incorrect decision may have been made in relation to their care and support they have an effective means to have the decision reviewed.

### **What is the aim?**

Good communication can help prevent misunderstandings on both sides. By talking through the issues, the local authority can understand if they've missed anything and the person can also understand why a decision was reached rather than just simply what the outcome decision is.

The proposals aim to promote good communication between people seeking to make an appeal and the local authority to resolve any disputes that emerge as efficiently as possible. They promote the principles of early resolution, good communication, fairness, equality, independence, accessibility and proportionality.

The appeals process has been designed with the aim of resolving disputes in a less costly and time consuming manner compared with legal routes of challenging decisions.

### **What is the process?**

The proposals put forward a 3 stage process, with the emphasis on early resolution wherever possible. First, there's the early resolution stage, where the local authority facilitates open and constructive dialogue with the person making the appeal, with the aim of achieving a prompt resolution.

If early resolution is not reached, the appeal progresses to the second stage. This is the independent review stage; where the local authority appoints an independent reviewer. The reviewer will review the local authority's original decision and make a recommendation as to whether they consider that decision was correct.

The third and final stage of the process is the authority decision. This is where the local authority makes a decision considering the Independent Reviewer's recommendation.

### **What are the timescales?**

The broad framework sets out that the early resolution and the independent review stage should take approximately up to 30 working days each to complete. However, this time period can be extended where the person's involvement is delayed for ill health or the appeal is complex.

The process intends that people can lodge an appeal up to 12 months from the local authority's original decision. However, local authorities have the discretion, if they wish to do so, to consider an appeal beyond the 12 month time limit.

### **Who can lodge an appeal?**

An appeal may be made by the person with or without support; or the appeal may be made on an individual's behalf by someone else: a family member, a friend, or anyone who has the consent of the person (if they have capacity to consent), or who are doing so in their interest (if they lack capacity).

An appeal may also be made by an independent advocate appointed under section 67 of the Care Act 2014 for people who have substantial difficulty in being involved with assessments, care planning or care reviews; it may be an independent advocate appointed under the Mental Capacity Act, or any other independent

advocate.

## **Implementation of appeals policy**

The government plans to implement the appeals policy from April 2020. During the interim period, we will develop the policy to respond to the key issues identified during the consultation held in 2015. This will also allow local authorities sufficient time to prepare for implementation and appoint the independent reviewers.