

*Positive Ageing in London presentation 7.7.15*

## **Implementation of the Care Act**

Stephen Lowe, Age UK Care Policy Advisor.

### **Introduction**

The Care Act 2014 was based on the recommendation of the Law Commission, which carried out a review of all post war adult social care legislation with the aim of consolidating it into a single statute. The aim was also to consolidate underpinning regulations and guidance.

The goal of consolidation, and the Law Commission's intention that existing user and carer rights should not be diluted, resulted in recommendations based on the existing system rather than a 'clean sheet' approach. However in the course of this review and subsequent development of the Act the context in which care is provided changed dramatically due to;

- Radical cuts to social care provision – Over the past 10 years spending on social care services for older people has plummeted by a third (34.2 per cent) from £8.1bn in 2005/6<sup>i</sup> to £5.46bn in 2014/15<sup>ii,1</sup>. The government also decided to implement a new funding system based on the recommendations of another commission, the 'Dilnot Commission' on care funding
- Under the current government there has been a strong emphasis on 'integration', which is often taken to mean integration between health and care systems though arguably it should be broader than this and should encompass housing, transport and community development.

What has emerged is therefore an act which in its overall structure is aimed at clarifying the existing system and existing service user rights but which does in fact include a number of innovations.

Key innovations are;

- Stronger duties to provide information and advice, including to people who fund their own care.
- A duty on local authorities to manage local care markets to ensure that there is a choice of good quality services available including for people who purchase their own care

- For the first time, statutory duties to make enquiries where abuse or neglect of an adult is suspected.
- Legislation spells out in detail how assessment of need must be carried out
- This includes how spending that counts towards the lifetime spending cap will be calculated.
- Eligibility for services is based on national rather than local criteria.
- For the first time carers will have a right to support if they are found to be eligible following assessment
- A right to advocacy for people who would be unable to participate in assessment or subsequent decision making without support
- People who meet eligibility criteria but who, following means testing, have to pay the full cost of care, can still ask the local to provide care. In this case the local authority will become responsible for the person's care but will be able to charge for arranging and managing it on top of the cost of services
- Local authorities will be able to delegate assessment and decisions about whether someone qualifies for help to an independent agency – for example an independent social work practice or a voluntary organization.

### **Implementation; the timetable**

The Act was to be implemented April 2015 except for proposals related to the long term cap, which are intended to be implemented in April 2016. This includes the new lifetime cap on individual spending and a new appeals system. However assessment to calculate spending that counts towards the cap will start before April 2016. The DH also decided to delay implementation of the right for self funders to request that the local authority should arrange their care. This was delayed, for people with residential care, needs till 2016

### **Implementation; what we know so far**

- Concerns about information and advice – some Local Authorities are opting for web only or want to rely on generalist information – but the Act requires they are pro-active in getting advice to people in a suitable format, particularly financial advice to help people to plan for the future.
- Several organisations report that some local authorities are planning not to review their current eligibility criteria. New eligibility criteria are intended to be equivalent to the former 'critical and substantial' bands of Fair Access to Care Services but there might well be people who would qualify under the new criteria but not under the old ones.
- Some local authorities have said they will not commission advocacy services as required by the Act or are cutting 'non Care Act' advocacy to fund new services.
- The National Audit Office has published a report on 'Care Act phase 1 reforms but it is based mainly on interviews, statistical data and case studies which were mainly done prior to implementation of the Act, so it is mainly about what stakeholders thought was going to happen.

## **What we don't know**

- Eligibility criteria require that a person's needs must result in 'significant impact on wellbeing'. The Association of Directors of Adult Social Services thinks new national eligibility criteria are more generous than the previous 'critical and substantial' criteria used by most local authorities, but Age UK thinks this will depend on how 'significant impact on wellbeing' is interpreted. The Department of Health is currently carrying out a review of this using the methodology, based on activities of daily living, that was used in setting the eligibility criteria. It is probably too early to tell but the DH needs information for the Comprehensive Spending Review.
- How local authorities are implementing Market management duties. This is important as local authorities are increasingly using individual purchasing, e-markets, so it is important that they ensure individuals have a choice of services to purchase.
- The impact of delegation of assessment to third parties – at present local authorities who are considering this appear to be concentrating mainly on the expected additional demand for assessment from self funders who just want to ensure that their expenditure counts towards the lifetime spending cap.

## **Planned Age UK activities**

Care and Support Alliance planning a survey of local authority eligibility criteria in Autumn. Looking for a small number of case studies to show impact of restricted eligibility criteria/underfunding

Age UK is also considering a broader survey of implementation of the Act in the autumn.

Look at potential for test cases on various aspects of implementation. Likely areas would be;

- local authority interpretation of 'significant impact' on wellbeing. This is likely to be apparent in how local authorities treat current Independent Living Fund users now that ILF money is transferred to local authorities
- Restriction of aids and adaptation to people with eligible needs
- Issues affecting individuals as a result of local authorities failing to ensure choice and sufficiency of services.

Stephen Lowe 22.6.15

---

<sup>i</sup> Health and Social Care Information Centre (2007); "Personal Social Services Expenditure and Unit Costs, England, 2005/06," - <http://www.hscic.gov.uk/catalogue/PUB00533/per-soc-serv-exp-unit-cost-eng-2005-06-tab-v1.xls>

<sup>ii</sup> Department for Communities and Local Government (2014); "Revenue Account (RA) budget 2014 to 2015," - [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/365591/RA\\_2014-15\\_data\\_by\\_LA\\_-\\_Nat\\_Stats\\_Release\\_-\\_Revised\\_22-Oct-2014.xls](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/365591/RA_2014-15_data_by_LA_-_Nat_Stats_Release_-_Revised_22-Oct-2014.xls)