The Care Bill
Reforming care and support

Surrey consultation event
23 September 2013
A brief history of care and support law

Around 30 Acts of Parliament over more than 60 years:

National Assistance Act 1948: established the welfare state and abolished the Poor Laws

NHS and Community Care Act 1990: first major Government reform, including right to assessments

Community Care (Direct Payments) Act 1996: new powers to make direct payments

Health and Social Care Act 2001: updates on direct payments

Chronically Sick and Disabled Persons Act 1970: major reforms, providing entitlement to community services

Carers (Recognition and Services) Act 1995: the first Act to recognise carers

Carers and Disabled Children Act 2000: extending direct payments to carers

1948 1960... 1970... 1980... 1990... 2000... 2010...
Caring for our Future

If adult care and support in England is going to respond to challenges it must help people to stay well and independent

• Promote people’s **wellbeing**

• Enable people to **prevent and postpone** the need for care and support

• Put **people in control** of their lives so they can pursue opportunities to realise their potential
What does the Care Bill do?

Part 1 of the Care Bill sets out to reform adult care and support in England:

- It delivers many of the commitments in the *Caring for our Future* White Paper
- It provides for a new capped costs system for funding care and support, based on the recommendations of the Dilnot Commission
- It achieves a fundamental reform in its own right, to simplify and clarify over 60 years of legislation, following the recommendations of a three-year review by the Law Commission
What does the Care Bill do?

The Bill is built around people, it:
- ensures that people’s well-being, and the outcomes which matter to them, will be at the heart of every decision that is made;
- puts carers on the same footing as those they care for;
- creates a new focus on preventing and delaying needs for care and support, rather than only intervening at crisis point;
- puts personal budgets on a legislative footing for the first time, which people will be able to receive as direct payments if they wish.

The Bill makes care and support clearer and fairer, it:
- reforms the funding system for care and support, by introducing a cap on the care costs that people will incur in their lifetime.
- will ensure that people do not have to sell their homes in their lifetime to pay for residential care, by providing for a new universal deferred payments scheme;
- provides for a single national threshold for eligibility to care and support;
- gives new guarantees to ensure continuity of care when people move between areas, to remove the fear that people will be left without the care they need;
- includes new protections to ensure that no one goes without care if their providers fails, regardless of who pays for their care;
- has new provisions to ensure that young adults are not left without care and support during their transition to the adult care and support system.
What does this mean?
The new care and support system from April 2017...

You may need care and support if you have a condition such as dementia, or other problems that affect your quality of life or ability to carry out daily activities.

If you have a care and support need, you should contact your local authority, which can provide...

...an assessment of the care and support you need, what services are right for you and whether you are eligible for state support

...info & advice on the services available to help you stay well

...reablement, rehabilitation & other free services

...advice on local services and how much they cost

Every year your local authority will review your care needs and your financial situation. From April 2016 they also keep a record of how much eligible care you have needed in total.

You pay what you can afford towards the cost of your care but from April 2015 you will be able to defer the payment of residential care fees so that you don’t have to sell your home in your lifetime to pay for care.

Your local authority helps with costs you can’t afford if you have less than £23k of wealth. From April 2016, if you have less than £118k you could receive some financial help with residential care costs.

Care costs after April 2016 are capped at £72k, which is the limit on what you will have to spend on eligible care over your lifetime. Once you have reached the cap your local authority will pay the reasonable costs to meet your eligible care needs for the rest of your life. If you receive financial support then you could spend less than this amount.

You will still be responsible for some care-related expenses...

If you are in residential care, you will pay a contribution towards your general living expenses, just like you would if you were living in your own home. This contribution is expected to be around £12k a year in 2016.

You are responsible for the cost of any additional services that you choose to have beyond what the local authority would provide, such as having a second bedroom in a care home, or help with lower level care needs.

The Care Bill: reforming care and support
## Implementing the reforms

<table>
<thead>
<tr>
<th>Primary legislation – the Care Bill</th>
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<td>The legal duties and powers</td>
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<th>Secondary legislation – the regulations</th>
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<tr>
<td>More detail on critical requirements, often related to processes. The scope of regulations will depend on the powers specified in the Bill.</td>
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<tr>
<th>Statutory guidance</th>
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<tr>
<td>Guidance on how to meet legal obligations in the Bill. Will set out at a high-level the expectations of local authorities when exercising their functions. These are not mandated requirements, but the LA must have “cogent” reasons that it can legally justify if it wants to take another course.</td>
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<th>Practice guidance</th>
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<tr>
<td>Best practice guidance, toolkits and other products which help support implementation. These do not have any legal status, so may be used by LAs, or not. They will vary from one area to another, and should be agreed/co-produced with stakeholders to ensure buy-in.</td>
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Implementing the reforms

National and local co-production and engagement across the sector are central to delivery

Care and Support Programme & Implementation Board
- Developing and maintaining the **programme plan**, identifying key operational milestones, risks and interdependencies, providing **assurance**, and communicating implementation progress through the **joint programme management office**.

Care and Support Transformation Group
- Ensuring the vision of the Care Bill becomes a reality through **challenge and peer support** by local authorities, care providers and voluntary sector professionals.

In each Local Authority area, we will expect to see a partnership with communities, voluntary sector, providers and others to prepare for and see through implementation.

Strong connection with sector groups, e.g.
- **Think Local Act Personal (TLAP)**
  - Cross-sector leadership partnership focused on driving forward work with personalisation & community-based social care

- **Towards Excellence in Adult Social Care (TEASC)**
  - Focus on local government performance improvement

- Plus provider groups, VCS organisations, Care & Support Alliance, etc.

Working with **Department of Health** policy leads and **regional directors** to support development of regulations and guidance by engaging with key stakeholder groups

Working with **regional leads** to develop local implementation plans drawing on expertise from existing networks and engaging with local partners to understand what is needed

The Care Bill: reforming care and support
Implementing the reforms

Funding and the Spending Round

- Public finances have been extremely challenging, local government more than most
- Steps have been taken in this Spending Review to support social care with NHS funding.
- For 2015/16 this is to be extended, and also supporting integration through pooling of money into the £3.8bn Integration Transformation Fund.
- Commitment of funding for implementation of Care Bill changes – some from 2015/16, others from 2016/17.
### The Care Bill: Part 1, topic by topic

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<th>Topic</th>
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<td>General responsibilities of local authorities</td>
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<td>8-13</td>
<td>Assessment and eligibility</td>
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<td>14-17</td>
<td>Charging and the cap on care costs</td>
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<td>18-23</td>
<td>Meeting needs</td>
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<td>24-33</td>
<td>Care and support planning</td>
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<td>34-36</td>
<td>Deferred payment agreements</td>
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<td>37-41</td>
<td>Moving between areas</td>
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<td>42-47</td>
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<td>58-66</td>
<td>Transition from childhood</td>
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<tr>
<td>67-76</td>
<td>Other provisions</td>
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Clauses 1-7: General responsibilities

Set out the general responsibilities of local authorities towards all people:

- The **well-being principle** underpins the entire legal framework. It sets a defining purpose for care and support, and influences the way all functions are carried out in relation to individuals.

- **Universal obligations** towards all local people:
  1. arranging services, facilities or taking other steps to **prevent, reduce or delay** needs for care and support
  2. **information and advice** to help people understand the care and support system, access services and plan for the future
  3. **promoting diversity and quality in the market** of providers so that there are high quality services to meet people’s choices

- Requirement to work collaboratively and **cooperate** with other public authorities, including **duty to promote integration** with NHS and other services (including housing).
Clauses 8-13: Assessment and eligibility

Start the person’s journey through the care and support system:

• Describe how needs can be met, to give an illustration for the clauses which follow.

• Single duty for assessment of people who may use services. Focus of assessment on needs, impact on wellbeing, and outcomes – not other factors.

• Expanded duty to assess the needs of carers, on the same basis as those they care for. This assessment must also focus on outcomes, for example whether the carer wishes to work, as well as whether they are willing and able to care.

• Placing the eligibility framework in law for the first time, so that regulations establish a national minimum threshold for what needs are “eligible” for local authority support – for people who use services and carers.

• Regulations to provide for the national eligibility threshold will be published in draft following the Spending Round – to allow for a discussion to ensure that these work effectively.
Clauses 14-17: Charging and the cap on care costs

Explain when and how a local authority may charge for the cost of meeting needs:

• Powers for local authorities to charge for care and support – with regulations to specify certain services which must always be provided free.
• A clear statement that a carer cannot be charged for any support provided directly to the person they care for.
• Setting a cap on the care costs which an adult will pay in their lifetime to meet their eligible needs, including:
  1. different levels of the cap for different ages
  2. a process for indexing the level of the cap over time
• Requirements for financial assessments, to determine what the person pays for care and support, including paying for daily living costs when in a care home.
Clauses 18-23: Meeting needs

Clarify who is entitled to have their care and support needs met:

- Sets out the **entitlement to care and support** – based on eligible needs, ordinary residence, and where relevant the outcome of the financial assessment.

- Includes a new **right to request** the local authority’s support for self-funders with eligible needs.

- The **first right to support for carers** – on the equivalent basis to the people they care for, and with clarity around how meeting those needs may include care directly for the person cared for.

- Broad powers for the local authority to meet needs in all other circumstances.

- **Exceptions and prohibitions** where the local authority may not meet needs – forming the boundary with the NHS (e.g. for Continuing Healthcare), housing and other public services.
Clauses 24-33: Care and support planning

Describe how to decide how needs should be met:

- Entitlement to a **care and support plan**, and requirement that local authority must help the person decide how to meet their needs. Right to a **personal budget** as part of the care and support plan.
- Right to a **direct payment** to meet some or all of needs in the care plan.
- Requirement to provide an **independent personal budget** to record care costs for people with eligible needs but who want to arrange their care themselves, without the support of the local authority.
- Duty to provide a **care account** to all people with eligible needs, to record accrued care costs and progress towards the cap.
- New duties to **review** care plans and IPBs, to ensure people’s needs continue to be met and care costs remain accurate over time, and re-assess as necessary.
- Duties to provide information and advice on meeting and preventing needs to people who are not otherwise entitled to support.
Clauses 34-36: Deferred payments

Allowing for deferment of care charges:

- Powers to require local authorities to offer a deferred payment agreement to people with particular needs, or in particular circumstances.
- These powers will be used to implement a universal deferred payments scheme, so that people do not have to sell their homes in their lifetime to pay for residential care.
- Ability to specify conditions, including for instance what information people receive, the duration of the agreement, and how the debt is secured.
- An ability to charge interest and administrative fees – to ensure that the system is cost-neutral for local authorities.
Clauses 37-41: Moving between areas

Enabling people to move between areas without the fear of losing care:

• New duty to ensure **continuity of care** when moving between areas.
  1. Current local authority must share the care and support plan and other information relating to the person and their carer.
  2. New local authority must provide information before the move, assess the person’s needs, and then arrange to meet their needs on the day of arrival based on the previous care and support plan.

• Clarifying the **deeming rules** for ordinary residence for people placed in accommodation in another area, so that people cannot be left between areas with responsibility uncertain.

• A Schedule with new powers for **cross-border placements** between England, Wales, Scotland and Northern Ireland.

• Updating powers for the Secretary of State to resolve **disputes** between local authorities, and to allow local authorities to recoup costs from each other.
Clauses 42-47: Safeguarding

The first statutory framework for protecting adults from abuse and neglect:

• New duty for local authority to carry out **enquiries** (or cause others to) where it suspects an adult is at risk of abuse or neglect.

• Requirement for all areas to establish a **Safeguarding Adults Board** to bring together LA, NHS and police to coordinate activity to protect adults from abuse and neglect.

• SABs to carry out **safeguarding adults reviews** into cases where someone who is experiencing abuse or neglect dies or there is concern about how authorities acted, to ensure lessons are learned.

• New ability for SABs to **require information sharing** from other partners to support reviews or other functions.

• Removes the existing power (under NAA 1948) for local authorities to remove people from their homes.
Clauses 48-57: Market failure and oversight

Clarifying protections when a care and support provider fails:

- Updated duty for local authority to **temporarily meet needs** when a care provider suffers a business failure.
- Duty applies to all people in the area, regardless of level of need or who was funding the care and support.
- Further duties in relation to **cross-border cases**, where a provider fails and the person has been the responsibility of a Welsh local authority.
- A **new market oversight regime** and a role for the Care Quality Commission in relation to financial oversight of certain care providers:
  - Regulations to specify which “difficult to replace” providers are included
  - Requirement for CQC to assess financial sustainability
  - Powers for CQC to require contingency plans, or an independent business review
  - Requirement to inform local authorities when failure is imminent, to support local planning.
Clauses 58-66: Transition from childhood

New provisions to support better transition to adult care and support:

- Powers for local authorities to **assess young people and young carers** under the adult statute in advance of their 18th birthday, to prepare for transition.
- A duty to **assess the adult carers of disabled children**, to identify any support needs, and prepare for transition of the child.
- Powers and duties extended to young people who are not receiving children’s services, but who may have needs for adult care and support at 18.
- No age limits, only that assessment must be of “significant benefit” to the individual – so there is flexibility to assess whenever is best.
- A **power to provide support** to meet the needs of adult carers of children.
- A duty to ensure **continuity of care around transition** – so that if a young person is receiving services on their 18th birthday, but adult care and support is not ready, they must continue to receive the same service.
Clauses 67-76: Other provisions

A series of other provisions to complete the legal framework:

- Restating existing powers for local authorities to recover debts – for instance where someone has failed to pay any charges due for their care and support.
- A requirement for the Secretary of State to carry out a review of the level of the cap, daily living costs and financial limits every five years.
- Re-enacting the law on reducing delayed discharges from NHS hospitals.
- A few small amendments to the provisions for people receiving after-care for mental disorder under the Mental Health Act 1983.
- Clarifying local authority responsibilities in relation to people in prison with care and support needs.
- A requirement to hold registers of blind and partially sighted people.
- A power to issue statutory guidance to local authorities.
- A new power for local authorities to delegate some of their functions to a third party – although they would still be legally responsible for their duties.
Care and support funding reform:
How we are helping people pay for their care and support
Government accepted the Dilnot principles for future funding of care and support, and will reform how care is paid for.

<table>
<thead>
<tr>
<th>A cap will be introduced on the costs that people have to pay to meet their eligible needs (from April 2016).</th>
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<tr>
<td>The cap will be set at £72,000 in April 2016 for people of state pension age and over and lower for working age adults and free care for people who turn 18 with eligible needs.</td>
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<tr>
<th>Financial support will be provided to more people to help them with their care costs (from April 2016).</th>
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<tr>
<td>This will help people with their care home costs if they have up to £118,000 in assets (including their home). Where the value of someone’s home is not counted, we intend to provide financial support with care costs to people who have up to £27,000.</td>
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<th>A standard contribution to living costs of around £12,000 a year will be set (from April 2016)</th>
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<tr>
<td>People in care homes will remain responsible for their living costs when they reach the cap if they can afford to pay them. This will not count towards the cap.</td>
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Care and support funding reform: 
*What is changing (2)*

The care reforms will mean people have more opportunity to financially plan and the costs they face will no longer be unlimited

<table>
<thead>
<tr>
<th>A universal deferred payment scheme (from April 2015)</th>
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| People should not have to sell their home in their lifetime to pay for their residential care costs. Local Authorities will be under a duty to offer deferred payment agreements to ensure this does not happen. 
We have proposed that those people who meet all the following criteria be eligible: have been assessed by the local authority as requiring residential care; have less than £23,250 (in April 2015) in assets excluding the value of their home; and whose home is not occupied by a spouse or dependent relative. |

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<tr>
<th>Developing information and advice (from April 2015)</th>
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| An information and advice strategy, including new local authority duties, will support people to financially plan. Local authorities will be under a duty to provide care and support information, including how to access independent financial advice where it is needed. 
National and local government, NGOs and financial services organisations are working together to ensure people have access to the information and advice they need to make the right choices about their care and support. |

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<th>Working with financial services organisations</th>
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<tr>
<td>People should have a range of options to help them pay for their care costs. We are working with financial services organisations to help create conditions to allow new financial products to develop. The cap on care costs should improve the affordability and relevance of products.</td>
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</table>
Mrs B, age 80, develops arthritis and needs care and support in her own home.
The value of her assets excluding her home is £20,000. Her home is worth £200,000 but this is not considered within the calculation of her assets because she is receiving care in her own home.
Her income is £260 per week, including lower rate attendance allowance (AA)* worth around £60 per week.

The local authority calculates her needs can be met at a cost of £100 per week.
She has a financial assessment to determine how much she can afford to pay. As a result, she contributes £62 a week.

After 3 years her care needs increase and she moves into a care home. At this point her progress towards the cap is £16,000. This is the total amount paid by Mrs B and the local authority by that point.
Her assets (not including her home) have reduced to £18,500.
As Mrs B is now receiving residential care so her home is now considered as part of her assets – her total assets are now considered to be £218,500.

As Mrs B has assets over £118,000 she does not qualify for financial support.

She receives higher rate attendance allowance* of £90 per week.

She contributes

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<tr>
<th>Care Costs (which count towards the cap)</th>
<th>Daily Living Costs</th>
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<tr>
<td>£400 per week</td>
<td>£230</td>
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She has

<table>
<thead>
<tr>
<th>Assets</th>
<th>Income</th>
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<tr>
<td>£218,500</td>
<td>£290pw (from her pension and attendance allowance)</td>
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Mrs B reaches the cap after 2 years and 10 months in the care home.

After which:

The local authority pays £400 per week to meet her needs.

She remains responsible for her daily living costs.

She is no longer eligible for attendance allowance as the local authority contribution is meeting her care needs.

She remains in the care home for one more year after which her remaining assets are around £167k
Staying independent – plan and prepare

The care and support system will focus on promoting people’s wellbeing and independence, keeping them safe and connected to their communities, and delaying or reducing needs for care and support wherever possible.

**Raising awareness**
Who should we target? How should this be achieved (local vs. national)?

**What advice do people need on financial planning and decisions**
When is support required and what form should this take?
What organisations should be involved?

**Encouraging people to plan and prepare for their care and support**
Taking advantage of opportunity of more people coming into contact with local authorities.
Assessment of the care and support you need

Assessments should be tailored to people’s needs – and they should not be bureaucratic

- **Ensuring local authorities can manage demand for assessments**
  
  Early assessments to prepare for introducing the cap
  
  Workforce development

- **Joint assessments and removing barriers to integration**
  
  Opportunities and challenges created by the cap

- **Ensuring individuals can access and benefit from these reforms**
There will be greater clarity over what people must contribute towards the costs of meeting their eligible needs, and the level of financial support offered will be fairer and more consistent across England.

The principles for the new charging system

Requesting the local authority to arrange care

Fairer cap for working age adults
Different caps for different ages
Interaction with the charging system

Top ups and additional payments
Protection for vulnerable people
Paying for care – how to pay

People will have new options on how to pay the costs they remain responsible for. We will protect people from having to sell their home to pay for their residential care in their lifetime by introducing a universal deferred payments scheme.

Details of the deferred payments scheme
Qualification criteria?
Safeguards and excessive fees?
Use of disposable income wider flexibility?

Financial products to help people pay for their care
What solutions will be important and how can we help them develop?
How can financial advice help people make the right decisions?
Interaction and referrals between local authorities and financial advice?
Meeting your eligible needs

Everyone with eligible needs will have a personal budget or independent personal budget that will set out how much it would cost the local authority to meet a person’s eligible needs and how much counts towards the cap.

### Personal budgets
Supporting transparency, Information requirements, proportionality, resource allocation systems.

### Care accounts
Projections of reaching the cap

### People moving between areas

### Disputes
Current arrangements, lessons from other sectors
Once people have reached the cap, we want to see a smooth transition to them having their eligible care costs paid by their local authority, which avoids any unnecessary disruption to care. People will be aware of when they have reached the cap.

**Continuity of care when the cap is reached**
How can the rules on local authorities support this?

**Top-ups and additional payments**

**Direct payments**
What happens next?

The Bill builds on almost five years of engagement. We want to keep that going:

- **Funding reform**: please respond to the consultation by 25 October.
- **National eligibility**: please comment on the discussion paper by 29 November.
- **The Bill itself** – we want to keep talking to stakeholders as the Bill passes through Parliament, to make sure we understand views and take every opportunity to improve the legislation. Follow progress at [http://services.parliament.uk/bills/2013-14/care.html](http://services.parliament.uk/bills/2013-14/care.html)
- **Secondary legislation/Statutory guidance** – the Bill provides for around 20-30 sets of regulations, and will require a new bank of statutory guidance. We will be working through stakeholders in a series of advisory groups to develop and consult on regulations and guidance:
  - May 2014 – publish draft regulations and guidance for consultation
  - October 2014 – publish final regulations and guidance.
  - April 2015 – new legal framework comes into effect.
Please respond to the consultation document...

Online at: https://www.gov.uk/government/consultations/caring-for-our-future-implementing-funding-reform

Email responses to: funding-reform@dh.gsi.gov.uk

Written responses to: Caring for our Future – Implementing Funding Reform, Department of Health, Area 313B, Richmond House, 79 Whitehall, London, SW1A 2NS