



Carers Partnership Board

AGENDA

Date: Wednesday 12 September 2012

Time: 9.30 am

Venue: Mezzanine Room 2, County Hall, Aylesbury

No	Item	Timing	Page
1	Apologies for Absence/changes in membership	9.30	
2	Minutes and matters arising Minutes of the meeting held on 13 June 2012 to be agreed	9.35	1 - 10
3	Hate Crime Presentation from Angie Sarchet	10.00	11 - 20
4	Draft Care and Support Bill Presented by Nadiya Ashraf	10.20	21 - 70
5	Update from the Executive Partnership Board	10.50	
6	Update on Priorities	11.00	

7	<p>Date of next and Future Meetings 14 November 2012 at 9.30am in Mezzanine Room 1</p> <p>Dates of future meetings – all meetings commence at 9.30am</p> <p>2013 23 January in Mezzanine Room 2 13 March in Mezzanine Room 2 15 May in Mezzanine Room 2 17 July in Mezzanine Room 2 18 September in Mezzanine Room 2 20 November in Mezzanine Room 2</p>		
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If you would like to attend a meeting, but need extra help to do so, for example because of a disability, please contact us as early as possible, so that we can try to put the right support in place.

*For further information please contact: Maureen Keyworth on 01296 383603
Fax No 01296 382421, email: mkeyworth@buckscc.gov.uk*

Members

Stephen Archibald, Carers Bucks
Nadiya Ashraf, Buckinghamshire County Council, co-Chairman
Amela Avdic
Clare Blakeway-Phillips, NHS Buckinghamshire
Mary Brazier, Oxford Health NHS Foundation Trust
Richard Brook, Bucks and Milton Keynes Crossroads Care
Ian Cormack, Carer Representative, co-Chairman
Debi Game, Bucks ULO
David Jack, Carer Representative
Jill Jack, Carer Representative
Joy Jannetta, Oxford Health NHS Foundation Trust
Margaret Morgan-Owen, Alzheimer's Society
Kathy Nawaz
Nigel Palmer
Chris Petford, NHS Buckinghamshire and Oxfordshire Cluster
Sam Shaw
Ann Whiteley, Carers Bucks



Carers Partnership Board

Minutes

Wednesday 13 June 2012

Those in attendance:	
Stephen Archibald	Carers Bucks
Nadiya Ashraf	Buckinghamshire County Council, co-Chairman
Amela Avdic	Carer Representative
Richard Brook	Bucks and Milton Keynes Crossroads Care
Ian Cormack	Carer Representative, co-Chairman
David Jack	Carer Representative
Jill Jack	Carer Representative
Margaret Morgan-Owen	Alzheimer's Society
Kathy Nawaz	Carer Representative
Nigel Palmer	Carer Representative
Sam Shaw	Carer Representative
Ann Whiteley	Carers Bucks



No	Item
1	Apologies for Absence/changes in membership No apologies. The group introduced themselves.
2	Minutes and matters arising The minutes of the meeting held on 14 May 2012 were agreed.

With regard to the budget for the Learning Disability Service, Nadiya reported that the Learning Disability Partnership had raised the issue of the cut in the budget. Trevor Boyd agreed to look into this issue and provide a breakdown. It was agreed that Ian Cormack and Nadiya Ashraf would follow up on this and email out the breakdown.

Action: IC/NA

With regard to attendance at the Prevention and Wellbeing Board, Steve Archibald said he had not been able to attend the last meeting as the representative of the Carers Partnership Board, but would be attending the next one.

Margaret Morgan-Owen referred to the work on the NHS Carers Breaks and her wish to be involved. It was noted that Zita Calkin would be updating the Carers Partnership Board on the process.

Ian Cormack spoke about the upcoming SDS Information Event being held for Carers of People with Learning Disabilities. Flyers had been sent out advertising the event.

3 Transitions Protocol

Ian welcomed to the meeting Amy Moore, Joint Commissioner Transitions. Amy gave a presentation on the Transitions Protocol and Pathway which was jointly funded by Adults and Family Wellbeing and Children and Young People Services. The following was noted:

- Amy's role is to embed the Multi Agency Transitions Protocol and Pathway from work done by Multi Agency Transitions Board.
- The Board is chaired by Rachael Rothero and has multi agency representation. The project champion is Chris Munday.
- The Board was keen to see the protocol and pathway embedded in the care programme and cascaded to parents, carers and families.
- It covers age range 14-25 and whilst it has been suggested it should start earlier, there is a statutory obligation for agencies to have a transition review at age 14 years to help move young people into adulthood.
- This is not about transition into Adult Social Care Services. Government has made it clear it is about transition to adulthood and for professionals to ensure young people get the appropriate support.
- The transition review begins before a young person's 17th birthday, when Adult Services becomes involved, including Mental Health, in looking at what support needs to be provided in planning for the future. This includes work around education, employment, training and independent living.

- Guidance for professionals is also included in the protocol.
- Whilst the guidance has been signed off and agreed by the Multi Agency Transitions Board, further work is needed with regard to the pathway, and part of Amy's role is to work with parents and carers to ensure the pathway is more user friendly. This includes work with the Youth Service to make it more interactive.
- There will be a Carers/Parents workshop looking at The Community Care Act and parents rights. In this connection it was hoped to have parent champions in connection with the transition work.
- There will be person centred reviews and it was noted that South Bucks has carried out person centred review training. A person centred review should take place at age 14 years, but it was noted the young person is not always there and there was a move to change this through training, to give a better idea of the needs of the young person.

Ann Whitely expressed concern that the parents of the young people do not appear to have a say once the person has reached the age of 18. Whilst there are legalities around this, it was different for people with learning disabilities. There was a feeling that the families should still be involved, but they do get marginalised.

Amy said in light of Government guidelines, they were looking at continual assessment from 0 – 25 years and ensuring that this was bedded into practice. This process was in place in some areas, but currently not in Buckinghamshire which was not a pathfinder area. She said they also want to look at the level of need and were looking at spending over the next couple of years in relation to what services will provide. For instance, residential care was not appropriate for all. In Aylesbury and Abingdon & Whitney College there is a 24/7 learning support package put in by Macintyre College and it was hoped that further funding would be obtained for this.

Richard Brook said it was fundamental that carers needed to be engaged. From 18years on, parents and carers can be excluded. He asked how they would ensure parents and carers remained involved through the protocol and said he would like the Board to have an impact on this aspect.

Amy said the protocol was about professionals' responsibilities and they wanted to do more regarding the pathway. She agreed to take this issue back to the Transitions Board. David Jack said this was a capacity issue and there was a need to determine the best way to do this. He suggested that parents would know how best to ensure it worked as it should. However, he recognised that there were issues because children did need to be independent. Amy suggested that

	<p>Connexions could be a lead agency on this. It was also suggested that people out of the area needed to be considered. Amy said that they were working with Macintyre in this connection.</p> <p>Ian expressed the view that, even when a young adult was deemed to have capacity, it should still be made clear that they could, if they want, choose to have their parents or other Carer fully involved in decision making with them and to advise them.</p> <p>Ian thanked Amy Moore for her presentation.</p>
<p>a</p>	<p>Task & Finish Group on Adults with Disabilities and their Carers in Wycombe District</p> <p>This was an additional item and not sent out on the agenda.</p> <p>Ian welcomed to the meeting Ted Piker, Wycombe District Council Scrutiny Officer and Matt Knight, Wycombe District Councillor and a member of the Task and Finish Group.</p> <p>The membership of the group and the terms of reference were circulated. It was noted particularly that the recommendations coming from the Task and Finish Group needed to be cost neutral, based on current budgets and these recommendations would be presented to Wycombe District Council in the first instance. If accepted, they will then be implemented. It may also be that some recommendations would be made to outside bodies. Those interviewed included officers from Housing and taxi licensing and written reports had been received from Customer Services. The purpose of presenting to the Board was to seek comments and collate them for inclusion in the work of the Task and Finish Group. Comments from the Physical Disabilities Partnership Board were also being sought.</p> <p>The Chairman said this would fit in with one of the priorities set by the Carers Partnership Board, which was ‘To open a dialogue with the District Councils to establish their housing provision, allocation and support policies in relation to carers and the people they care for.’ In this connection, there was a need to understand that role and how issues were being addressed. It was hoped the Task and Finish Group Report would help in this respect.</p> <p>One issue to address was to ensure the wider community could access information easily and this included awareness from staff in Customer Care. Members agreed provision of information was important and needed to be given proactively. Whilst the ordinary resident can access information through the internet, many disabled people and</p>

carers don't want to use IT facilities. In this connection, Ted Piker said that support was also offered through the district council offices in High Wycombe and also the Marlow and Princes Risborough Information Offices.

Action: Debi Game to get information regarding consultation and send out to members via the Clerk.

Ted Piker referred to the questionnaire that had been sent out during the consultation process, and whilst the timescale for this had been missed, they had spotted gaps by attending this meeting. David Jack asked for more recognition with regard to autism, particularly Asperger's Syndrome and suggested there may be certain requirements under the Autism Act that may need to be considered. Ted said they were not just looking at the traditional interpretation of disability, but some areas had not been covered because of timescales, however they would endeavour to do what they could.

Ian thanked Ted Piker and Cllr Matt Knight for their briefing.

4 Buckinghamshire Safeguarding Vulnerable Adults Board Annual Report 2010/11

Ian welcomed to the meeting Charles Owen-Conway, Chairman of the Safeguarding Vulnerable Adults Board, who gave members a briefing on the work of the Board.

The following was noted:

- The Board consists of 12 organisations operating across Buckinghamshire.
- Its objective is to scrutinise and monitor activities across Buckinghamshire to understand the definition of vulnerable adult.
- To identify people at risk, put in harm's way or subjected to harm and look at what action needs to be taken, either away from or in the home.

There are six main areas of operation to provide a means of reducing the risk of abuse:

- Promotion, through raising awareness;
- Prevention, through robust employment practices and working with communities and mainstream providers
- Protection – robust multi-agency policy and procedures and standards of best practice
- Monitoring
- Promotion of learning

- Partnership working

Further information can be accessed through the website, including guidance and where to go for help and guidance.

There is an awareness campaign throughout the County and there was a need to keep sending out messages. Charles Owen-Conway said it was difficult to know how to reach all carers, but they were lucky to have Alison Lewis on the Board. Members noted that it had taken some time to get the Annual Report for 2010/2011 published, but the Report for 2011/12 would be published by the end of September 2012.

Richard Brook asked about the reporting mechanism to the Board for carers issues, particularly where the carer may be the perpetrator. He said he was keen to put to the Board whether it was satisfied that it had the right representation of service users, how comments should be collected and imparted to the Board and how these concerns can be taken forward. The Chairman suggested this could be done through a consultation on carers priorities, possibly through a workshop. Richard said that Gill Manning Smith was suggesting ongoing dialogue throughout the process to ensure the carer knows the outcome.

Some of the members of the Partnership Board agreed that the feedback process needed to be more robust and it was noted that there had been an increase in budget to look at these issues.

With regard to levels of abuse members agreed that they considered a service user receiving personal care from an excessive number of domiciliary care staff from a care agency, amounted to a form of abuse. Charles Owen Conway agreed with this and cited an incident involving a company providing services that fell short of what was required under their contract, and the fact that action was taken on this.

The following was agreed:

- Ann Whitely to work jointly with services users regarding referrals, but to have an initial session with carers to understand the current process. Ann said they already have a Service User and Carers Group that works well. However, it was emphasised that the carer can also be the perpetrator.
- Ann Whitely and Richard Brook to work on creating a mechanism for ongoing channelling of carers issues to the SVAB collectively, and whether this is dealt with under client groups or themes, i.e. respect.

5	<p>Update from the Executive Partnership Board</p> <p>There were no updates to report.</p>
6	<p>Short Breaks Update</p> <p>The Chairman welcomed to the meeting Zita Calkin, Joint Commissioning Manager, who gave an update on Short Breaks and the work done so far.</p> <p>Budgets of £400,000 each from the NHS and £400,000 from Carers Grant money have been identified to form a pool of money for short breaks for carers, and a joint plan will be in place by September 2012. In discussion the following was noted:</p> <ul style="list-style-type: none"> • The funding is to provide a break for carers for whatever duration they deem necessary. • An amount of £500 - £750 would be provided for a break • The co-ordinating service will be going through an independent brokerage service and there will be robust monitoring regarding spending and outcomes, as well as a support plan. • Further develop the process for BCC Social Care funds - It will be a phased process • The Buckinghamshire County Council element of the Breaks for Carers funding would be awarded to eligible Carers as the result of a Carers Assessment. It is intended that the process will, as far as possible, mirror the PCT Breaks for Carers Scheme. Further work needs to be done on self assessment and eligibility in respect of Carers. • Finalising documents for Health breaks i.e. easy to fill in and ensuring clear pathway. • A working group has been established to develop the process for carers breaks, which will include a self-assessment questionnaire and objectives and outcomes to measure performance. • Further work will include finalisation of documents and templates, the process for payment to carers, developing a carers' pathway for the model; developing carers self assessment forms/questionnaires and outcomes for the service, production of simple expenditure sheets and an agreed reporting and monitoring mechanism for the service. <p>It was noted that the allocated money for the break would not be means tested. The process for issuing the funding had not yet been finalised for Buckinghamshire but it was suggested that the brokerage service would record what the carer wants from the break. However, a</p>

	<p>questionnaire could still be sent out which would ensure the process was robust and the outcome properly recorded. Nadiya Ashraf emphasised the need to collect data regarding the impact and outcome of the breaks. Ann Whitely said one of the main benefits from the funding is that the amount does not need to be spent in one go.</p> <p>Zita Calkin said they were trying to reach groups of carers that they were not currently engaging with. The PCT's half of the process would enable GPs to identify and acknowledge the effect the caring role has on the health of the carer and it would include those who may not have received a service to date.</p> <p>Richard Brook said this was a big step forward and the Board should be supportive of the initiative. There had been a constriction of resources in Buckinghamshire in the last 18 months and many carers were relying on accessing services to have a break, and these were limited in relation to day services. Margaret Morgan-Owen expressed concern regarding providing breaks for those caring for people with dementia, where the carers has respite, but the situation at home worsens when they return. She asked whether Social Care could feed into this work because they would have knowledge of dementia needs. It was suggested that those people with learning disabilities would also be affected. Debi Game said there was a need to balance the condition and circumstances of the carer. Zita Calkin suggested that additional domiciliary care was an alternative to respite care in a residential home. She said these issues reflected the need to ensure that outcomes were taken into account.</p> <p>Zita said that in the long term input from carers was needed particularly with regarding to designing forms and the processes. Margaret Morgan-Owen offered support for this and it was noted that other carers wished to be involved.</p> <p>Members of the Board discussed the Lottery funding, which Crossroads Care have accessed to provide Breaks for Carers over 60 years of age. Richard said that after some delays the scheme was now up and running and Clare Blakeway-Phillips and Rachael Rothero were supporting the group.</p>
<p>7</p>	<p>Priorities</p> <p>Nadiya Ashraf asked members to look at the list of agreed priorities and decide on which could be taken forward immediately with a view to implementation, ownership of each of them and how they can be delivered within this financial year.</p>

	<p>Richard Brook said he was receiving funding from BCC with regard to his work, part of which is to compile a guide to self funding. He said the funding enabled him to provide one to one and a half days a week to work on the Carers Partnership Board's priorities, by either supporting people or investigating resources himself and reporting back to the Board.</p> <p>Members looked at the priorities under each outcome and these are set out in the attached table of Priorities.</p> <p style="text-align: right;">Action: It was agreed that Lou Patten would be invited to the November meeting.</p>
<p>8</p>	<p>Carers Week Update</p> <p>Members noted there would be a BAME focus event on 18 June 2012 which would have a health focus. The timetable would be emailed to members.</p> <p>It was suggested that The Law Society: Carers Assessment be put on the agenda for the September meeting. It would present an opportunity to comment on giving legal rights to carers. Nadiya Ashraf said it would be a culture shift for organisations in terms of delivering services.</p> <p style="text-align: right;">Action: Item for September meeting</p>
<p>9</p>	<p>Hospital Discharge</p> <p>Item not discussed.</p>
<p>10</p>	<p>Date and Time of next meeting</p> <p>12 September 2012 at 9.30am in Mezzanine Room 2, County Hall, Aylesbury, HP20 1UA. Future Dates:</p> <p>14 November 2012 at 9.30am in Mezzanine Room 1</p>

Chairman

Hate Crime

Angie Sarchet
Cohesion & Equalities Manager



Hate Crime Definition

Any criminal offence which is committed against a person or property that is motivated by hostility towards someone based on their disability, race, religion, gender identity or sexual orientation

ACPO/CPS



Examples of behaviour (1)

- Physical attacks on a person or a place - such as physical assault, damage to home/vehicle, spitting at someone, offensive graffiti, arson, damage to places of worship, vandalising graveyards, acts of terrorism etc
- Threat of attack – e.g. offensive letters, abusive or obscene phone calls, cyber bullying, groups hanging around to intimidate and unfounded malicious complaints.



Examples of behaviour (2)

- Verbal assaults or insults – offensive leaflets and posters, abusive gestures, spitting, dumping of rubbish/excrement outside homes or through letter boxes, bullying in the workplace/at school

Can be experienced by
an individual or a whole community



Why now?

- Complaint from resident/victim 2011
- The 'Hidden in Plain Sight' report (EHRC, 2011)
- Cross-governmental action plan published March 2012
- 'Improving Support for Victims in Thames Valley' report (Victims' Commissioner, May'12)



Challenge It, Stop It, Report It

- Focuses on 3 core issues
 - Preventing hate crime
 - Increasing reporting
 - Improving operational response to hate crimes



Reported Hate Crime in Bucks

For the period 1st April 2011 to 30th April 2012, there were **231** reports of Hate Crime to the police in Buckinghamshire

	Nat.	Survey
89% were racist crimes	67%	33%
6% were based on sexual orientation	10%	15%
4% were religious hate crimes	4%	15%
2% targeted disabled people; and	3%	18%
1% targeted transgender people	0.75%	5%

Hate Crime Summary Tool, Thames Valley Police

In 2010, 48,127 hate crimes were recorded by police forces in England, Wales and Northern Ireland.



Hate Crime Survey

- Snapshot audit
- Establish people's experience of hate crime and incidents and their views of the services available
- Ran from 14 November 2011 – 6 January 2012
- 257 respondents
- Gender, race and age demographics matched those of the county* and sample is therefore representative of Bucks population in these areas

*Buckinghamshire ACORN Profiler



Findings from Survey

- People reported against 7 strands - race, disability, religion/belief, sexual orientation, gender identity, gender and gender reassignment
- All of the strands, apart from race, showed higher reporting than TVP records (where data available)



Findings from Survey

- Comparison of survey and national data suggests an **under-reporting** issue
- 16% reported they had been a victim of hate crime in the past year (self-selection)
- Top 3 issues reported were:
 - Insults and harassment*
 - Threat of violence*
 - Unwanted sexual contact*
- 75% of incidents occurred between 1-5 times
- 52% in public places
- Only 26% said they reported to any agency



Reasons for Not Reporting

- 55% didn't think the police could or would do anything
- 45% too common to report
- 41% didn't think it would be taken seriously
- 67% didn't know where they could get any support



Hate Crime Survey - Issues

- Good number of responses but sample size not statistically valid
- Compounded by not all respondents answering all questions
- Disproportionately high level of Urban Professional respondents, with other groups under-represented – may not have been exposed to the survey
- Issues re representation of those residents across Bucks more at risk of being a victim of hate crime



Focus Groups

- Focus groups set up across the county
- Proved challenging in terms of engagement
- Feedback – “Do not want to re-live their experiences or do not relate to hate crime”
- 1 to1 sessions offered but unsuccessful
- Planned literature review



What do the findings tell us?

- Bucks has residents who are experiencing hate crime
- Need improvement in identification and reporting
- Need to improve people’s confidence to report
- Need to improve awareness of where to report and the agencies that do exist



Actions going forward

- Literature review
- Mapping exercise to identify local support agencies, provision and any training needs
- Work with districts to monitor, respond and share information
- Review trend data with other authorities
- Public awareness raising to increase reporting and where to go for help
- Partnership awareness raising
- Develop multi-agency training
- Consideration of third party reporting



STOP HATE UK

- Registered charity and social enterprise based in Leeds
- Evolved from the Leeds Racial Harassment Partnership.
- Considerable experience and expertise in supporting victims of Hate Crime
- Provides a fully staffed 24-hour Hate Crime reporting service
- Referral reports to Police, Victim Support and a multi-agency Hate Crime referral point (if in existence) where the caller resides
- If a caller wishes to remain anonymous, referrals to one or all agencies are adjusted accordingly
- £10k / £31k



Safe Places

- LD Partnership Board
- Businesses etc
- Stickers in window
- Pilot in South Bucks (Burnham – June 2012)
- BCC Com Safety funding identified
- Looking to roll it out across the county
- Feel vulnerable not just vulnerable
- Small steering group



And finally ...

- Any questions?
- Anything further wish to see included in draft action plan?
- Are there any operational issues or concerns?
- What is the potential for working together on this?



Draft Care & Support Bill, July 2012

Briefing 1: Short briefing on key clauses affecting carers

The Care and Support Bill simplifies, clarifies and improves on the current legislation. It aims to introduce a more person centred care and support system that can meet and respond to the needs of individuals and promote their wellbeing. This briefing outlines the main parts of the Bill which affect carers. For a more detailed overview of the whole Bill, please refer to Carers Trust Briefing 2: Detailed briefing clause by clause and Carers Trust Briefing 3: What does the Bill mean for young carers?

1. Clause 1: Duty to promote individual wellbeing

A new statutory principle to promote individual wellbeing in decisions made with and about individuals. "Wellbeing" relates to: physical and mental and emotional wellbeing; protection from abuse and neglect; control over day-day life (how care is provided); participation in work, education, training and recreation; social and economic wellbeing; domestic, family and personal relationships; the adult's contribution to society. Importantly for carers, clause 1 (3) (e) specifies that local authorities must consider "achieving a balance between the adult's wellbeing and that of any friends or relatives who are involved in caring for the adult".

2. Clause 2: New duty to provide information and advice

Local authorities will be required to establish and maintain an information and advice service so that people understand how the local care and support system operates; what choices they have and how to access services.

- **Implications:** Local organisations that already provide information and advice will be critical for meeting this duty and there is potential to build on existing strengths, e.g. face-face and condition specific advice and support

3. Clause 3: New duty to promote diversity and quality in provision of services

To promote an efficient care and support market that will ensure people have choice of a range of providers and high quality services, the local authority has to ensure that there is sufficient information so that people can make informed decisions about their care; that the market meets current and future demand and continues to develop and improve in a sustainable way.

- **Implications:** for sustainability of local services. To ensure duty is upheld local organisations will need to inform local authorities about number of carers, the level and nature of demand for services and how local organisations can meet needs.

4. Clauses 4-6: Duties to promote cooperation between partners

Local authorities must cooperate with partners e.g. NHS body, police, prison authorities and probation and any other person specified in regulations and make arrangements so that there is cooperation between adult social care, housing and the Director of Children's Services. Local authorities must cooperate with health services and health related services e.g. NHS Commissioning Board, clinical commissioning groups (CCGs) and NHS trusts or foundation trusts to integrate provision, promote wellbeing and prevent the need for care and support.

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- **Implications:** Potential impact on how carers are supported and for services to work collaboratively with a range of partners to meet carers' needs. Clarification needed on how duty will apply to voluntary organisations providing services on behalf of the local authority and those contracted to deliver a statutory service.

5. **Clause 7: New duty to provide services to prevent or delay needs for care and support**

Local authorities will have to provide or arrange for the provision of preventative services, facilities and resources; identify existing services and “involve or make use of them” for carrying out this duty and identify adults whose needs are not being met. Providing or arranging preventative services can be charged for.

- **Implications:** for carers support services that provide a range of universal and preventative services, particularly as supporting carers is in itself preventative. Duty is potentially a key lever for investment and development of carers support services and there. Law could refer specifically to supporting carers. It will be important that local organisations can demonstrate preventative interventions and outcomes in relation to reducing or preventing levels of need; numbers of carers and unmet need.

6. **Clause 9: New rights to be consulted on the assessment of the adult needing care**

A new single right to assessment for disabled people and older people with care and support needs and duty to assess applies regardless of an adult's level of need or financial resources. It must take into account outcomes the adult wishes to achieve in their day-day life and how provision of support can help to achieve those outcomes. Adults, any carer and any person whom the adult asks the authority to consult must be consulted as part of the assessment.

7. **Clause 10: New single duty for carer's assessments based on appearance of need**

A new single duty for local authorities to undertake an assessment based on whether a carer “may have needs for support – whether currently or in the future”. This removes the requirement for carers to request an assessment or to be providing a substantial amount of care on a regular basis.

A “carer” is defined as an adult providing care or who intends to provide care to an “adult needing care” but not by virtue of a contract or as voluntary work (apart from in some circumstances). The assessment will continue to be on whether the carer is willing and able to continue to provide care but carers will now have to be consulted and any person whom the carer asks the authority to consult.

- **Implications:** welcome step to give carers the same rights as the people they care for and consulting carers should ensure they are fully involved in the assessment process. There needs to be clarification of the definition of a “carer” eligible for assessment and whilst the new law appears to equalise rights between carers and the people they care for there are two omissions: The duty to assess carers does:
 - not appear to apply regardless of the level of their financial resources (as with a “needs assessment” clause 9 (3) (b)) or;
 - Consider outcomes the carer wishes to achieve in day-day life and how they can be supported to help achieve these outcomes (clause 9 (4) (a)(b)).

8. **Clause 12: Needs assessments should include a whole family assessment**

Regulations will prescribe that on carrying out the assessment, local authorities must have regard to the needs of the family of the person to whom the assessment relates. This could include anyone in the family, e.g. children, siblings and carers.

- **Implications:** A whole family approach in assessing needs is welcome and should have particular implications for young carers. However, implementation will depend on how the regulations are drafted and good practice and it is not clear how a whole family needs assessment will relate specifically to the duties to meet needs¹.

9. **Clause 13: New eligibility framework and national minimum eligibility threshold**

For the first time local authorities will have to determine eligible needs of an adult who has care and support needs and carers' needs against an eligibility framework which will be set out in regulations. Regulations will provide clarity on what constitutes 'eligible' and set a national minimum eligibility threshold which will mean that local authorities will not be able to tighten the threshold below the national minimum. The White Paper² also sets out that to support a new national minimum eligibility threshold the Government will test options for a new assessment framework.

- **Implications:** welcome development to standardise eligibility and address inequalities in accessing support.

10. **Clause 14: Charging for carer's services is optional but local authorities can impose charges in meeting carer's needs for support**

Applies to the services for meeting the needs of individuals and carers entitled to support (under the duties to meet needs, clause 17 and clause 19). Local authorities "may" impose charges but they are not under a duty to do so. The power to impose charges will now also apply to "putting in place the arrangements" for meeting needs and not just to services. Regulations will also include circumstances where services can be provided free of charge.

11. **Clause 15: Financial assessment and charges will apply to the cared for person if meeting a carer's needs for support is through providing care and support to the adult needing care:** Aims to simplify rules regarding financial assessments to make it clearer to individuals who need to contribute to the cost of their support. It applies to adults who need care (15(1)) and to carers who need support (15(2)).

12. **Clause 19: New duty to meet carer's needs for support**

Having carried out a carer's assessment, local authorities will be subject to a new duty to meet carer's needs when they meet the eligibility criteria and if they are ordinarily resident or present in the area. The duty can be met through:

Provision of support to the carer:

- If there is no charge for the service
- If the carer's financial resources are at or below the financial limit then the local authority must meet their needs (whether or not a charge applies)

¹ For further information about what the draft Bill means for young carers, see Carers Trust Draft Care and Support Bill Briefing 3 <http://www.carers.org/>

² Caring for our future: reforming care and support (July 2012) <http://www.dh.gov.uk/health/files/2012/07/White-Paper-Caring-for-our-future-reforming-care-and-support-PDF-1580K.pdf>

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- If the carer is above the financial limit then they are still eligible for support if they ask the authority to meet their needs (if there is a charge then the carer will have to pay for the services)

Provision of support through provision of care and support to the adult needing care:

- If there is no charge and the “adult needing care” agrees
- If the adult needing care is at or below the financial limit then the local authority must meet the needs in question (carer’s) by providing care and support to the adult (whether or not a charge applies and as long as the adult agrees)
- If the adult needing care is above the financial limit then they must ask the authority to meet the needs in question (the carer’s) by providing care and support to the adult (if there is a charge then the adult needing care will have to pay for the services)
- Importantly, if it’s not feasible to support the carer through providing care for the cared for then the authority has to find some other way to provide support to them (clause 19(8)).

It is important to note that it is optional for local authorities to impose a charge for meeting needs under this duty (clause 14) as with meeting the needs of an adult with eligible needs (clause 17).

In addition, if after a carers’ assessment (and where applicable a financial assessment) a carers’ needs do not meet the eligibility threshold and the duty to meet their needs does not apply, then the local authority can still meet their needs through the provision of support to the adult needing care as long as the adult agrees (clause 19(6)). Meeting a carers’ needs through provision of support to the adult may also include supporting the adult even if the duty to meet their needs (clause 17) does not apply (clause 19(7)).

- **Implications:** The duty does strengthen carers’ rights to support but if carers or the cared for person is over the financial limit then they will have to request that their needs are met by local authorities and if their authority is charging for carers’ support services then they will have to pay for their own support.
- It is important to consider whether the current drafting of this clause provides for fair and reasonable access to services for carers who have been found to have eligible needs in the context of local authorities’ charging for support.
- Further clarity is needed about how this duty applies in relation to services specifically for the carer and in relation to services for the adult they care and on definition of “adult needing care” and “carer”

13. Clause 24: Carers should be consulted on care and support plans; carers can prepare plans jointly with local authorities (or other organisations); carers can request a copy of the care and support plan

Two definitions are used: “care and support plan” for adults with care needs and “support plan” for carers. Both should specify needs identified by the needs assessment or carer’s assessment; extent to which needs meet eligibility criteria; the needs that will be met by the local authority and how; which outcomes are relevant and whether a carer wishes to work or participate in education, training or recreation. In meeting some needs with direct payments plans must state which needs are to be met; how they will be met with direct

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payments and the amount and frequency of direct payments. Other organisations can also carry out plans. In addition, where an adult has a carer a care and support plan and a support plan can be combined if the adult and the carer agree.

14. Clause 25 and 28: New entitlement to a personal budget and new right to request direct payments which can be paid to the carer or the adult needing care

For the first time the draft Bill sets out a requirement for personal budgets for adults needs care and carers. Where the local authority is contributing towards the adult's personal budget the adult has a right to request direct payments (paid to them or a nominated adult who can be a family member or carer). Regulations will set out conditions that apply to this request, including on capacity to make a request. **Clause 29** clarifies the law in relation to what should happen if the adult is without capacity to request direct payments and a person must be authorised under the Mental Capacity Act 2005 to request direct payments.

Responding to the consultation

Carers Trust strongly encourages carers and Network Partners to respond to the consultation and to feed into the Carers Trust response. You can do this by:

- Organise your own consultation event or contribute to a local consultation response with carers and local partners
- Use Carers Trust Consultation Toolkit to help you put together a response – includes more information on the consultation process and top tips
- Respond online by answering the consultation [questions by topic](#) or [comment-by-clause](#);

The consultation deadline is 19th October 2012

- Submit your own written response (using the Consultation Toolkit to help you). Email or send your consultation response to the Department for Health
 - Email: careandsupportbill@dh.gsi.gov.uk and copy in Carers Trust esmale@carers.org OR
 - Write to: Draft Care and Support Bill Team, Department of Health, 6th Floor Richmond House, 79 Whitehall, London, SW1A 2NS

Useful Resources:

- Carers Trust Consultation Toolkit – top tips on responding to the consultation <http://www.carers.org/>
- Carers Trust draft Care and Support Bill Briefing 2: Detailed Briefing clause by clause <http://www.carers.org/> - this briefing includes more detail on the whole Bill
- Carers Trust draft Care and Support Bill Briefing 3: What does the Bill mean for young carers? <http://www.carers.org/>
- The draft Care and Support Bill http://www.dh.gov.uk/prod_consum_dh and Easy Read version <http://www.dh.gov.uk/health/files/2012>
- The Law Commission report http://www.dh.gov.uk/health/files/2012/07/2900021-Reforming-the-Law-for-Adult-Care_ACCESSIBLE.pdf
- Department for Health 8 Factsheets <http://www.dh.gov.uk/factsheets>

For more information, help or advice please contact: Emma Smale, Senior Policy & Parliamentary Officer, Carers Trust esmale@carers.org



Draft Care and Support Bill, July 2012

Briefing 2: Detailed briefing clause by clause

Introduction

This briefing is an in depth analysis of the contents of the [draft Care and Support Bill](#); what it introduces and how it compares to existing legislation. A short briefing looking at key clauses affecting carers is also available (Carers Trust Briefing 1) and further information on what the Bill means for young carers (Carers Trust Briefing 3). Section 1 highlights the parts of the Bill which are most relevant to carers and carer's support services. The remaining sections summarise the Bill in more detail. The briefing includes analysis of what the proposals will mean for carers (see boxed text).

- Section 1: What does the Bill mean for carers
- Section 2: Background and the case for change
- Section 3: General duties and the new system
- Section 4: Assessment of needs
- Section 5: Eligibility
- Section 6: Entitlement to support and meeting needs
- Section 7: What happens after assessment
- Section 8: Personal Budgets and direct payments
- Section 9: Safeguarding adults at risk of abuse or neglect
- Section 10: Transitions, young carers and parent carers
- Section 11: Other provisions and next steps

Section 1: What does the Bill mean for carers?

- New duty to provide information and advice relating to care and support (clause 2)
- New duty to promote diversity and quality in provision of services (clause 3)
- New duty to promote cooperation between partners (clause 4-6)
- New duty to provide services that will prevent or delay needs for care and support (clause 7)
- New rights to be consulted on the assessment of the adult needing care (clause 9)
- New single duty for carers assessments based on appearance of need (clause 10)
- Needs assessments should include a whole family assessment (clause 12)
- New eligibility framework and national minimum eligibility threshold (clause 13)
- Charging for carers' services is optional but local authorities can impose charges in meeting carer's needs for support (clause 14)
- New duty to meet carers' needs for support (clause 19)
- Carers should be consulted on care and support plans; carers can prepare plans jointly with local authorities (or other organisations); carers can request a copy of the care and support plan (clause 24)
- New entitlement to a personal budget and new right to request direct payments which can be paid to the carer or the adult needing care (clause 25 and 28)

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Parts of the Bill that need further clarification and amending:

- Young carers and parent carers do not have equal rights to adult carers; they will still have to request an assessment and there is no clear duty to meet their needs
- The legislation aims to ensure better transition for young carers from children's to adults' services but these parts of the Bill are inconsistent with the law for young carers (clause 41)
- There are different definitions of "carers" that need clarification
- It's not clear how a whole family needs assessment relates to the duties to meet needs for care and support
- Definition of "provision of support to the carer" compared with services for the adult needing care
- Whether carers support services should be subject to charging
- Whether the duty to meet carers needs is fair and reasonable including for self-funders
- Whether there should be a duty to provide services to self-funders
- There is no definition of "needs"

Section 2: Background and the case for change

2.1. Why does the law need changing?

This legislation will affect everyone – most people will need some care and support at some point in their life and many of those people will need to be cared for by a family member or friend. The existing legal framework for adult social care is incoherent and made up of different pieces of legislation which makes it confusing and complex for people to understand. The current system is not meeting people's needs and this situation is getting worse with a growing and ageing population. The law urgently needs to be consolidated and simplified.

2.2. Why does the law need changing for carers?

Existing law for carers is complicated and hard to understand because it is split across three main Acts of Parliament. Law for carers applies to carers of all ages and is separate to legislation that applies to the people they care for.

2.3. Carers are currently treated differently to the people they support; they have to request an assessment and need to be providing a substantial and regular amount of care; local authorities are not obliged to provide support to carers even if they have identified need. As with people with care needs, there is no national eligibility threshold for support for carers and no national eligibility framework to determine levels of need.

Section 3: General duties and a new system

3.1. Overarching principles

The Care and Support Bill simplifies, clarifies and improves on the current legislation. It aims to introduce a more person centred care and support system that can meet

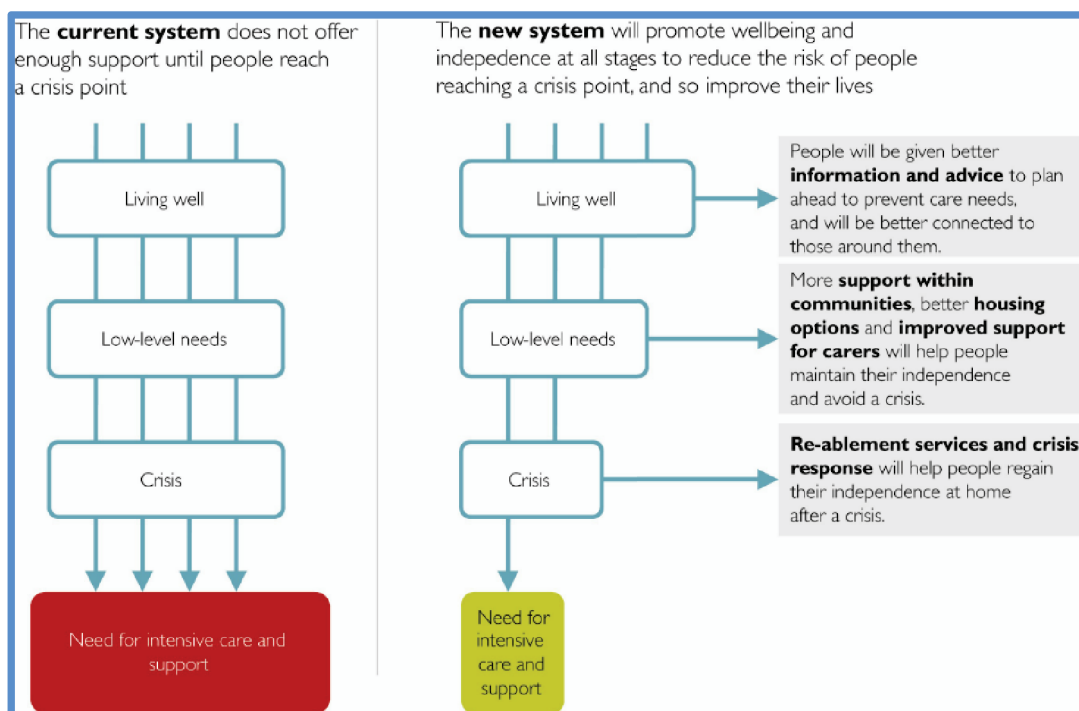
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and respond to the needs of individuals and promote their wellbeing. The new law adopts the majority of proposals outlined in the Law Commission's three-year review of adult social care¹ and it is based on the principles set out in the Government's White Paper *Caring for our future: reforming care and support*:²

- Promote health, wellbeing, independence and rights for long-term quality of life
- Treat people with dignity and respect and protecting them from abuse and neglect
- Achieve personalisation with real choice and control
- Harness skills, resources and networks in every community
- Recognise carers for their vital contribution
- A workforce delivering quality support in partnership with individuals, families and communities

3.2. Broader responsibilities and the wider community

The first section of the draft Bill introduces a number of general duties on local authorities which focus on more universal provision and prevention rather than just individual needs. These clauses outline how local authorities should support the wider community so that people are supported to maintain their own wellbeing and make decisions about their support.



3.3. Clause 1: Duty to promote individual wellbeing

Based on the Law Commission's recommendation for a "single unifying purpose around which adult social care is organised" clause 1 introduces a new statutory

¹ http://www.dh.gov.uk/health/files/2012/07/2900021-Reforming-the-Law-for-Adult-Care_ACCESSIBLE.pdf

² <http://www.dh.gov.uk/health/files/2012/07/White-Paper-Caring-for-our-future-reforming-care-and-support-PDF-1580K.pdf>

principle to promote individual wellbeing in decisions made with and about individuals. “Wellbeing” relates to: physical and mental and emotional wellbeing; protection from abuse and neglect; control over day-day life (how care is provided); participation in work, education, training and recreation; social and economic wellbeing; domestic, family and personal relationships; the adult’s contribution to society (clause 1(1)(2)).

The wellbeing principle means that when local authorities are making decisions with and about individuals they have to have regard to: the adult’s wishes and feelings; the importance of their participation in decisions and ensuring decisions have regard to the adult’s circumstances and not just “adult’s age or appearance of any condition”. **Importantly for carers, clause 1 (3) (e) specifies that local authorities must consider “achieving a balance between the adult’s wellbeing and that of any friends or relatives who are involved in caring for the adult”.**

3.4. **Clause 2: Duty to provide information and advice**

Local authorities will be required to establish and maintain an information and advice service so that people understand how the system operates in their area and what care and support choices they have and how to access the services available. Services can be provided jointly with other local authorities.

Local organisations that already provide information and advice will be critical for meeting this duty. There is potential for carers’ organisations to play an even greater role, particularly building on existing strengths, e.g. face-face and condition specific advice and support. This type of provision will be important to complement the Government’s commitment to develop online information and resources (see White Paper, page 30-31).

3.5. **Clause 3: Duty to promote diversity and quality in provision of services**

This clause provides for promotion of an efficient care and support market that will ensure people have choice of a range of providers and high quality services to meet care and support needs. The local authority has to ensure that there is sufficient information so that people can make informed decisions about their care; that the market meets current and future demand and continues to develop and improve in a sustainable way.

Carers support services will play an important role in ensuring this duty is upheld, in particular by providing information about the number of carers in an area; the level and nature of demand for services and how local organisations can meet their needs in relation quality and individuals’ outcomes.

3.6. **Clauses 4 - 6: Duty to promote cooperation with partners and integration of care and support with health services**

Clause 4 introduces a new duty for local authorities to cooperate with partners in promoting the wellbeing of adults needing care and support and of carers in meeting their needs. They must cooperate with partners including district councils (if the authority is a county council), each NHS body in their area, local policing body or part of the body in their area; prison authorities and probation and any other person

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specified in regulations. Where it is relevant local authorities must also make arrangements so that there is cooperation between the adult social care officers and housing officers and the Director of Children's Services.

In cooperating with health partners, the local authorities should seek to work with the NHS Commissioning Board where its functions relate to the area, clinical commissioning groups (CCGs) and NHS trusts or foundation trusts.

Clause 5 provides for cooperating in specific cases and makes it clear that local partners (specified above) must comply with a request for cooperation by the local authority unless it is "incompatible with its own duties" or would have an "adverse effect" on its own functions. Reasons for not complying with a request must be provided in writing.

Clause 6 goes on to specify that local authorities must cooperate with health services and health related services (which have an effect on individuals health) in order to integrate provision to promote wellbeing, prevent the need for care and support and improve the quality of care and support for adults and carers.

The duties to cooperate have potential to impact how carers are supported and enable carers' services to work collaboratively with a range of partners to meet carers' needs.

This section does not go as far as the recommendation by the Law Commission that the duty to make arrangements for cooperation also applied to education authorities, NHS public bodies, police and the National Offender Management service. The Government has also decided not to adopt the enhanced duty to cooperate which would apply to relevant organisations when a young person is moving from children's to adult's services.

Although, voluntary and community organisations are not statutory partners, clarification would be helpful on how they are to cooperate when they are providing services on behalf of the local authority and particularly when contracted to deliver a statutory service e.g. carry out a carer's assessment or manage support planning.

3.7. **Clause 7: Duty to prevent people's needs for support**

This is a new duty which will mean local authorities have to provide or arrange for the provision of services, facilities and resources which will contribute towards preventing or delaying needs for care and support or reduce those needs. Importantly local authorities are to identify existing services and "involve or make use of them" for carrying out this duty and identify adults whose needs are not being met. Providing or arranging preventative services can be charged for under this clause (clause 7(4)).

This duty has significant implications for carers support services that provide a range of universal and preventative services, particularly as supporting carers is in itself preventative. This provision potentially provides a key lever for investment and development of carers support services and there is scope for specific reference to carers as part of this provision. It will be important that local organisations can demonstrate preventative interventions and outcomes in relation to reducing or preventing levels of need; numbers of carers and unmet need.

Section 4: Assessment of needs

4.1. **Clause 8: Examples of how to meet needs**

Sets out examples of services that can be provided under the duties to meet needs (clauses 17-19) includes accommodation in a care home or other premises; care and support at home or in the community; counselling, advocacy and other types of social work; goods and facilities; information and advice.

4.2. **Clause 9: Assessment of needs of care and support**

This is a new single right to assessment for disabled people and older people with care and support needs. The duty to carry out a “needs assessment” applies regardless of an adult’s level of need or financial resources. It must take into account outcomes the adult wishes to achieve in their day-day life and how provision of support can help to achieve those outcomes. Adults, any carer and any person whom the adult asks the authority to consult must be consulted as part of the assessment.

4.3. **Clause 10: Assessments of carers need for support**

The Bill introduces a new single duty for local authorities to undertake an assessment based on the appearance of need that they may have or have in the future. This removes requirements for carers to request an assessment or to be providing a substantial amount of care on a regular basis.

It will remain the law that the carer has to be able and continue to be able to provide care and be willing and continue to be willing to provide care. The local authorities will also, as far as feasible have to consult the carer and any person whom the carer asks the authority to consult.

The aim of the assessment is to consider the impact of caring on the carer and to determine whether the carer has support needs and what those may be; it should also consider whether the carer works or is in education or wishes to work or participate in education, training and recreation.

As in existing law a “carer” is defined as an adult providing care or who intends to provide care to an “adult needing care” but not by virtue of a contract or as voluntary work. However, the draft Bill indicates that local authorities will now be able to override the exclusion of carers contracted or working voluntarily if it is “appropriate” to regard them as a carer.

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What is new?

- Carers should be assessed on the appearance of need
- Local authorities have to consult carers and any other person the carer wants to be consulted
- Carers who are contracted or working voluntarily can in some circumstances be regarded as a carer eligible for assessment

The single duty to assess carers on the appearance of need is a welcome step giving carers the same rights as the people they care for. Consultation of carers should ensure they are fully involved in the assessment process and they can involve an advocate if they request the authority to consult them. There needs to be clarification of the definition of a “carer” eligible for assessment in light of the new clause related to exceptions to the definition.

Whilst the new law appears to equalise rights between carers and the people they care for there are two omissions distinguishing carers’ assessments. The duty to assess carers does:

- not appear to apply regardless of the level of their financial resources (as with a “needs assessment” clause 9 (3) (b)) or;
- consider outcomes the carer wishes to achieve in day-day life and how they can be supported to help achieve these outcomes (as with a “needs assessment” clause 9 (4) (a)(b)).

4.4. **Clause 11: Refusal of assessments**

Carers are able to refuse an assessment but if they have refused and then subsequently request one then the local authority must assess the carer. If the carer refuses and the authority believes their circumstances have changed then they can carry out an assessment (under the duty to assess, clause 10). In this circumstance, if a carer is still not happy about having an assessment then they will need to refuse the assessment again.

4.5. **Clause 12: Further provisions for assessments including whole family assessments**

This part of the Bill provides for regulations on carrying out a whole family assessment as part of an assessment of an adult with care needs or as part of a carer’s assessment. The regulations will prescribe that on carrying out the assessment, local authorities must have regard to the needs of the family of the person to whom the assessment relates. This could include anyone in the family, e.g. children, siblings and carers.

Regulations are a form of secondary legislation which are more detailed and give effect to the primary legislation (the Bill or Act). They will require local authorities to take a whole family approach in assessing needs which is welcome. This should have particular implications for young carers, in so far as increasing the likelihood of identifying young carers and reducing inappropriate caring through meeting the needs of the adult or other family members.

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However, implementation will depend on how the regulations are drafted and good practice and this provision could be stronger on the face of the Bill. It is not clear how a whole family needs assessment will relate specifically to the duties to meet needs for care and support and a carer's needs for support (clauses 17-22) or support planning (clauses 23-24) or meeting a young carer's needs for support (including through meeting the needs of the adult with care needs).

A needs assessment can be carried out at the same time as a carers' assessment and either assessment may be carried out by someone other than the local authority or carried out jointly with the local authority. The local authority may provide information about the carer and the adult needing care to the person carrying out the assessment and resources and facilities required to carry out the assessment.

Carers' support services will be able to carry out assessments on behalf of the local authority and it will be necessary to consider the detail on this when the regulations are consulted on, in particular any issues around information sharing and details about an assessment framework (see 2.5).

Section 5: Eligibility

5.1. **Clause 13: Eligibility criteria**

After carrying out a needs assessment or carer's assessment a local authority must decide whether the person has support needs that meet the eligibility criteria and if they do what should be done to meet those needs. For the first time local authorities will have to determine eligible needs of an adult who has care and support needs and carers' needs against an eligibility framework which will be set out in regulations.

The regulations will provide clarity on what constitutes 'eligible' and set a national minimum eligibility threshold which will mean that local authorities will not be able to tighten the threshold below the national minimum. The White Paper indicates that the eligibility threshold will be set at 'substantial'. However, local authorities will be free to set it at a more generous level.

5.2. **Developing an assessment framework** (White Paper, p.32)

The White Paper sets out that to support a new national minimum eligibility threshold the Government will test options for a new assessment framework. This will include looking at the role of assessment in the reformed system and how to streamline the assessment process in relation to other assessments (e.g. benefits) and to make it easier to understand for individuals and their carers who may also want to self-assess.

5.3. **Clause 14: Power to impose charges**

Clause 14 applies to the services for meeting the needs of individuals and carers entitled to support (under the duties to meet needs, clause 17 and clause 19). Local authorities "may" impose charges but they are not under a duty to do so. The power to impose charges will now also apply to "putting in place the arrangements" for meeting needs and not just to services (14(1) (b)). Regulations will

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also include circumstances where services can be provided free of charge, e.g. of a “specified type”; provided “under specified circumstances” to an adult of a “specified description” and for a “specified period only” (14(4)(a-d)).

5.4. **Clause 15: Assessment of financial resources**

If the local authority has decided to charge for a service then they will be required to carry out a financial assessment. This clause aims to simplify rules regarding financial assessments to make it clearer to individuals who need to contribute to the cost of their support. It applies to adults who need care (15(1)) and to carers who need support (15(2)). On the basis of a needs assessment if the local authority is satisfied that there are needs for support, then they must assess the level of the person’s financial resources and the amount they may be able to contribute to the costs of their care.

Regulations will set out provision for carrying out a financial assessment and will make clear when it should be the carer or the person with care needs who is charged and the amount the adult needing care may be able to contribute to the carer’s need for support (15(3)). If the adult’s financial resources exceed the limit (either income, capital or a combination) then the local authority will not pay for care and support. The regulations will describe how to calculate income and capital and how different types of income and capital are to be treated as part of the assessment.

Making the distinction between charging carers and adults with care needs is vital, particularly in relation to issues around charging for replacement care. This provision needs to be consistent with the clauses relating to assessment (clauses 9-10) and duty and power to meet eligible needs (clauses 17-19).

5.5. **Clause 16: Deferred payment agreements**

This is currently adopted in some local authorities and means that they can defer a change in a property if the person enters residential care and the value of their home is taken into account. This will now apply to all local authorities but the local authority will also be able to charge interest in deferred payments, charge for administration costs and charge interest in those costs.

Section 6: Entitlements to support and meeting needs

6.1. **Clause 17 and 18: Duty and power to meet the needs for care and support**

Having carried out an assessment and where necessary a financial assessment there is a duty to meet identified needs if:

- They are ordinarily resident in the area or present with no settled residence
- There is no charge for meeting those needs
- The person does not have financial resources above the financial limit (clause 17(5)) then the local authority will cover the costs of meeting their needs (whether or not a charge applies (under clause 14))
- The person is above the financial limit then they are still eligible for support if they ask the authority to meet their needs (if a charge applies then the person will have to pay for the services (under clause 14))

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Local authorities will not have a duty to meet identified needs if the person is above the financial limit and they do not ask the authority to meet their needs. This is different from existing law which provides for a duty to meet needs regardless of financial resources and they can then be charged by the local authority (and costs recovered through the courts if they are not paid) (Carers and Disabled Children Act 2000).

Clause 19: Duty and power to meet a carer's needs for support

Having carried out a carer's assessment, local authorities will be subject to a new duty to meet carer's needs when they meet the eligibility criteria and if they are ordinarily resident or present in the area. The duty can be met through:

Provision of support to the carer:

- If there is no charge for the service
- If the carer's financial resources are at or below the financial limit then the local authority must meet their needs (whether or not a charge applies)
- If the carer is above the financial limit then they are still eligible for support if they ask the authority to meet their needs (if there is a charge then the carer will have to pay for the services)

Provision of support through provision of care and support to the adult needing care:

- If there is no charge and the adult agrees
- If the adult needing care is at or below the financial limit then the local authority must meet the needs in question (carer's) by providing care and support to the adult (whether or not a charge applies and as long as the adult agrees)
- If the adult needing care is above the financial limit then they must ask the authority to meet the needs in question (the carer's) by providing care and support to the adult (if there is a charge then the adult needing care will have to pay for the services)
- Importantly, if it's not feasible to support the carer through providing care for the cared for then the authority has to find some other way to provide support to them (clause 19(8)).

It is important to note that it is optional for local authorities to impose a charge for meeting needs under this duty (clause 14) as with meeting the needs of an adult with eligible needs (clause 17).

In addition, if after a carers' assessment (and where applicable a financial assessment) a carers' needs do not meet the eligibility threshold and the duty to meet their needs does not apply, then the local authority can still meet their needs through the provision of support to the adult needing care as long as the adult agrees (clause 19(6)). Meeting a carers' needs through provision of support to the adult may also include supporting the adult even if the duty to meet their needs (clause 17) does not apply (clause 19(7)).

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The duty does strengthen carers' rights to support but if **carers or the cared for person is over the financial limit then they will have to request that their needs are met by local authorities and if their authority is charging for carers' support services then they will have to pay for their own support.**

It is important to consider whether the current drafting of this clause provides for fair and reasonable access to services for carers who have been found to have eligible needs in the context of local authorities' charging for support. Further clarity is needed about how this duty applies in relation to services specifically for the carer and in relation to services for the adult they care.

- 6.2. **Clauses 20-22: Exceptions to meeting needs and a carer's needs for support**
Clause 20: Local authorities do not have to meet the needs of asylum seekers (who are excluded from benefits under the Asylum Act 1999) and this includes if their needs arise from being destitute. Asylum seekers who are caring for a family member or friend will also be excluded from having their needs met through meeting the needs of adult they care for.

Clause 21 specifies where it is not care and support that may meet needs and where responsibility lies with the NHS and **clause 22** specifies where responsibility lies with housing authority under relevant housing legislation.

Section 7: What happens after assessments

- 7.1. **Clause 23: Steps for the authority to take**

Where a local authority is required to meet needs, they must prepare a "care and support plan" or for a carer a "support plan". The "care and support plan" must specify which needs will be met by direct payment and help the adult decide how to have their needs met. It is not clear if subsections (b) and (c) also apply to carers.

If the local authority is not going to meet needs then they must give the adult a written record of the assessment of carer's assessment; record of a financial assessment and advice and information about how their needs can be prevented or delayed.

- 7.2. **Clause 24: Care and support plan, support plan**

This clause specifies what should be included in a "care and support plan" and "support plan": needs identified by the needs assessment or carer's assessment; extent to which needs meet eligibility criteria; the needs that will be met by the local authority and how; which outcomes are relevant (under section 9 as part of a needs assessment) and whether a carer wishes to work or participate in education, training or recreation; includes the personal budget for the carer.

Carers should be consulted by the local authority preparing a support plan for an adult as well as the person themselves and any other person they request to be consulted. Carers should also be given a copy of the care and support plan if the adult ask the authority to do so (clause 24(8)(b)). In the case of a carer's support plan, similarly the adult needing care should be consulted "as far as feasible".

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In meeting some needs with direct payments plans must state which needs are to be met; how they will be met with direct payments and the amount and frequency of direct payments.

Care and support plans and support plans can be prepared jointly with adults needing care or with carers and agreed jointly (clause 24(6)). Other organisations can also carry out plans. In addition, where an adult has a carer, a care and support plan and a support plan can be combined if the adult and the carer agree (clause 24(11)).

7.3. **Clause 26: Review of care and support plan or of support plan**

Review of plans must have regard to particular outcomes (only to be identified by a needs assessment not a carer's assessment) and carer's employment of education and training needs. Reviews must involve consultation with the carer and adult and if needs have changed the local authority must carry out a further needs assessment of carer's assessment if appropriate.

7.4. **Clauses 31-33: Continuity of care when a person moves**

New portability arrangements set out that if a person moves area it will now be up to the new local authority to continue to meet their needs as in the old areas and transitional arrangements will remain in place until a new assessment is carried out.

This section also outlines that if care arrangements are made by an authority in another area (including residential accommodation) then the authority that made the arrangement remains the responsible authority. Disputes about "ordinary residence" are addressed under clause 33.

Section 8: Personal budgets and direct payments

8.1. **Clause 25: Personal budgets**

For the first time the draft Bill sets out a requirement for personal budgets for adults needing care and carers. Personal budgets are defined as the amount that has been assessed for meeting needs; the amount which the adult must pay towards their care and support and the amount which the local authority must pay towards that cost (based on a financial assessment). A personal budget may also specify other amounts of public money available for a person's care e.g. relating to housing, healthcare or welfare.

8.2. **Clause 28,29,30: Receiving direct payments**

Clause 28 makes it clear that where the local authority is contributing towards the adult's personal budget the adult has a right to request direct payments (paid to them or a nominated adult who can be a family member or carer). Regulations will set out conditions that apply to this request, including on capacity to make a request; agreement by a nominated recipient; local authority discretion on allowing the adult or nominated person to receive direct payments; judging capability to manage direct payments and that direct payments are appropriate.

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Clause 29 clarifies the law in relation to what should happen if the adult is without capacity to request direct payments and a person must be authorised under the Mental Capacity Act 2005 to request direct payments. Conditions will also apply and will be listed in regulations. Regulations will also set out cases or circumstances where local authorities must not make direct payments (**clause 30**).

Section 9: Safeguarding adults at risk of abuse or neglect

9.1. **Clause 34: Enquiry by a local authority**

The draft Bill introduces a new statutory framework for adult safeguarding bringing the law in line with safeguarding legislation as it applies to children and young people at risk of abuse or neglect. Clause 34 stipulates that where local authorities have “reasonable cause” to suspect that a person has care and support needs and is at risk of abuse and neglect then they must make “whatever enquiries it thinks necessary to enable it to decide whether any action should be taken and if so by whom”.

It is significant that there is no definition of “neglect” included despite a distinction being made. The definition of “abuse” provides a list which focuses on matters related to a person’s finances or property; it is not clear if “abuse” as it applies under subsection 1 should be interpreted exclusively in relation to financial matters or include a broader definition, e.g. physical and or emotional maltreatment. Clarification will also be needed in relation to the functions of Safeguarding Adults Boards). **There is no specific reference to carers who may be in need of protection in relation to adults needing care.** Clear guidance will be necessary for this section: it is not clear what “enquiries” should involve; the process for making enquiries or who else (statutory or voluntary partners who may know or be involved in supporting the person) should be involved.

9.2. **Clause 35: Safeguarding Adults Boards**

All local authorities will now be required to establish a Safeguarding Adults Board (SAB) in their area with the objective to help and protect adult in its area in cases described in clause 34 (see comments above). SABs can be established for combined areas. CCGs will be required to be on SABs and local organisations will be able to be members. SABs will have to prepare a strategic plan and consult its local HealthWatch. Further detail on membership, strategy and annual report is included in Schedule 1).

9.3. **Clause 36: Safeguarding adults reviews**

Reviews must be arranged by the SAB if an adult has been found to be experiencing abuse and neglect or the SAB suspects this to be the case (even if the person is not receiving care in their area); and if an adult dies or there is “reasonable cause” concern about how another individual acted in the adult’s case. Findings of reviews, including identified lessons to be learnt from individuals’ cases and applying lessons to future cases, will be included in the SAB’s annual report. The annual report must be shared with the Chief Executive and leader of the local authority; local policing body; local HealthWatch and the chair of the Health and Wellbeing Board.

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It is not clear how SABs reporting will be shared more widely if at all (guidance will need to specify this level of detail). This may have particular implications for voluntary organisations and carers involved in the care and support of the individual or implicated in a review. Membership of SABs does not appear to include some key partners, most notably probation, prisons and mental health trusts. It does not appear that the duty to cooperate (under clause 4-6) which has been drafted as a general duty around promoting wellbeing will apply in specific circumstances where there is a safeguarding concern.

- 9.4. **Clause 37** specifies that local authorities may no longer remove a person in need of care from home. **Clause 38** places a duty on local authorities to protect the property of individuals when they are being cared for away from home but local authorities can recover reasonable expenses to do this.

Section 10: Transitions, young carers and parent carers

10.1 **Clause 39: Assessment of a child's needs for care and support**

Only refers to assessment of a child's needs for care and support on transition for children to adult care and support. This clause applies to any child including young carers who may have care and support needs. This clause specifies that a young person must continue to receive children's services (under the Children's Act 1989) until such a time as adult services have carried out an assessment and are ready to meet needs. This should prevent young people from losing support at the critical point of transition.

This is a much needed development to ensure continuity of care and support at the critical point of transition. However, it only refers to services under the Children's Act 1989 and it should include any social care support that a child receives under other legislation.

10.2. **Clause 40: Assessment of parent carer's need for support**

Parent carers may request an assessment when they provide or intend to provide care for their child (rather than a duty to assess needs as with an adult carer).

10.3. **Clause 41: Assessment of a young carer's need for support (at transition only)**

Aims to ensure better transition between children's and adult support and will enable young carers to undergo an assessment under adult legislation ahead of their 18th birthday, to determine what needs for support they may have at the age of 18, and support planning for their transition to adulthood.

Young carers approaching 18 may receive an assessment when they or their parent requests one (rather than a duty to assess needs as with an adult carer). A Young Carer eligible for an assessment is a person under 18 years caring for an adult and a child "in need" or part of a family for whom, or for a member of whose family is in receipt of services under section 17 of the Children Act 1989 (clause 41 (3)).

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A young carers assessment must include whether the young carer is able to care and is willing to do so after a young carer becomes 18 (clause 41 (8)) and when the young carer becomes 18 the local authority must decide whether to treat the assessment as an adult's carers assessment (clause 41 (11)). The assessment should include what the care and support needs are and likely to be when the child becomes 18.

Under this clause, the Government have clarified that:

- The assessment under the new adult statute would be in addition to any assessment or services received under children's services
- The right to a carer's assessment under section 1 of the Carers and Disabled Children Act 2000, would continue to apply to young carers aged 16-17
- The draft Bill would replace only the element of this provision which relates to carers over the age of 18. In effect, "carve out" the adult carers' element, since that right to a carer's assessment would be replaced by the provision in clause 10 of the draft Bill

It is inconsistent that there is a duty to assess adult carers when they appear they 'may' have need for support and not for young carer who are still required to request an assessment or their parent has to. This is also true for parent carers effectively giving adult carers stronger rights.

The provisions for young carers will remain the same (as provided for under The Children Act 1989, The Carers (Recognition and Services) Act 1995, Carers & Disabled Children Act 2000 and the Carers (Equal Opportunities) Act 2004). However, whilst the Law Commission recommended that the duties to assess a young carer in the 1995 and 2000 Acts should be retained and amended so that they would only apply to carers aged under 18, it also recommended that the 1995 and 2000 Acts are amended to make them consistent with the threshold for a carer's assessment under the proposed adult social care statute.

The Law Commission recommended that the Government and the Welsh Assembly Government should either consolidate the 1995 and 2000 Acts so that there is a single young carer's statute or repeal this legislation and incorporate the provisions into the Children Act 1989. Similarly, for parent carers the Government and Welsh Assembly should either integrate the duty to provide a parent carers' assessment in with the single young carers' statute, as described or incorporate them into the Children Act 1989.

The draft Social Care Bill makes provision in respect of adults caring for adults and it will repeal the current carer provisions that relate to adults caring for adults. It significantly develops adult carers' rights, their recognition and need for support, but it does not develop the law in the same way for young carers.

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Currently, the draft Bill separates the law for young carers but it is vital that the adult's statute promotes a whole family approach so that in meeting adults' needs adult services identify and properly support young carers without relying on children to provide part of the care package. It will be necessary to look at both the children's statute and proposed adult's framework to ensure that both children's and adult's services are responsible for meeting the needs of young carers.

On transition, older young carers will only be able to request an assessment which accounts for their needs beyond 18 if they are a child "in need" under the Children's Act 1989.

- This would set a higher threshold for support than currently applies for young carers' assessments and for adult carers' assessments;
- It would result in inconsistency between eligibility for assessments for young carers under 18 and young carers on becoming 18 and;
- Exclude young carers caring for parents who may receive services under other legislation e.g. currently the Chronically Sick and Disabled Person's Act

10.4. **Clause 42: Further provisions for assessments under 39 to 41**

Specifies that a needs assessment under section 17 can take place at the same time as a young carers assessment if the child and parents agrees or the local authority believes it is in their best interests (relevant to assessments at transition, clause 39).

10.5. **Clause 43: Continuity of services under section 17 Children's Act 1989**

Appears to omit continuity of services provided to young carers under section 1/2 Carers and Disabled Children's Act 2000.

Potential issues: The omission will be amended so that the same transitional protection applies if the services are provided under the 2000 Act to a young carer reaching the age of 18.

10.6. **Clause 44: Power to meet a young carers' needs for support**

As in the Carers and Disabled Children's Act 2000 and Carers (Equal Opportunities) Act 2004 and the local authority must have regard to any services provided under section 17 Children Act 1989.

Section 11: Other provisions and next steps

11.1. The remaining sections of the Bill include a number of important provisions:

- Updating **powers to recover debts** (clause 45-46)
- **Discharge of hospital patients with care and support needs** (clause 47 and Schedule 2): Aims to rationalise provisions for reducing delayed discharges from hospitals and replaces the Community Care (Delayed Discharges) Act 2003; specifies that the NHS Trust must notify the local authority of care and support needs and should consult the patient and carer. Provisions for assessing carers at the point of discharge have been retained (see Schedule 2).
- **Amendments to the Mental Health Act 1983** to ensure consistency in law between aftercare services and care and support services provided to people

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who have been retained in hospital for a mental disorder (clause 48 and Schedule 3)

- **New powers to delegate some care and support functions to other organisations** for example the assessment process of support planning (clause 51)
- **Repeals and revocations** the three Carers Acts from 1995, 2000 and 2004 are not being repealed (see section 9 for retaining provisions relating to young carers) but the new rights for carers in the draft Bill will replace the rights in these three Acts.

11.2. What's next?

Carers Trust strongly encourages carers and Network Partners to respond to the consultation and to feed into the Carers Trust response. You can do this in the following ways:

- Organise your own consultation event or contribute to a local consultation response with carers and local partners
- Use Carers Trust Consultation Toolkit to help you put together a response – includes more information on the consultation process and top tips
- Respond online by answering the consultation [questions by topic](#) or [comment-by-clause](#);
- Submit your own written response (using the Consultation Toolkit to help you). Email or send your consultation response to the Department for Health:

Email: careandsupportbill@dh.gsi.gov.uk

And copy in Carers Trust esmale@carers.org or;

Write to:

Draft Care and Support Bill Team
Department of Health
6th Floor
Richmond House
79 Whitehall
London
SW1A 2NS

The consultation deadline is 19th October 2012

11.3. For help, information or advice, please contact:

Emma Smale, Senior Policy & Parliamentary Officer, Carers Trust
esmale@carers.org

11.4. Useful Resources

- Carers Trust Consultation Toolkit – top tips on responding to the consultation <http://www.carers.org/>
- Carers Trust draft Care and Support Bill Briefing 1: Short briefing on key clauses affecting carers <http://www.carers.org/>

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- Carers Trust draft Care and Support Bill Briefing 3: What does the Bill mean for young carers? <http://www.carers.org/>
- The draft Care and Support Bill http://www.dh.gov.uk/prod_consum_dh
- Easy Read version of the draft Care and Support Bill <http://www.dh.gov.uk/health/files/2012>
- The Law Commission report http://www.dh.gov.uk/health/files/2012/07/2900021-Reforming-the-Law-for-Adult-Care_ACCESSIBLE.pdf
- Department for Health 8 Factsheets <http://www.dh.gov.uk/health/2012/07/cs-bill-factsheets/>



Draft Care & Support Bill, July 2012

Briefing 3: What does the Bill mean for young carers?

The draft Care and Support Bill makes provision in respect of adults caring for adults and it will repeal the current carer provisions that relate to adults caring for adults. It significantly develops adult carers' rights, their recognition and need for support, but it does not develop the law in the same way for young carers. **It provides for transition from children's services to adults services but aims to separate out the adult's statute with the legal framework for children** (see Appendix A for more details). This has the following implications:

1. **Unequal rights and age discrimination:** Young carers and parent carers do not have the same rights as adult carers because:
 - The Bill introduces a single duty to assess adult carers when they appear they 'may' have need for support (clause 10), but this is not the case for young carers who are still required to request an assessment or their parent has to and;
 - Removes the requirement for adult carers to be providing a substantial amount of care on a regular basis, but young carers will still have to undertake this
2. **Lack of emphasis on prevention:** young carers at transition will need to be "children in need" in order to be eligible for assessment. Although section 17 of the Children Act 1989 should result in preventative services for children and the whole family to safeguard and promote the welfare of children, in practice this may mean:
 - Identification of inappropriate caring will only happen when a child or family has already been assessed as "in need" and young carers (or a parent) will still have to request an assessment
 - Young carers may not meet "children in need" thresholds and there needs to be provision for early intervention and prevention of inappropriate caring
3. **Unhelpful approach to preventing inappropriate caring through meeting needs of the whole family:**
 - Whilst prevention and early identification may be set out in Practice Guidance the draft Bill does not make it clear how whole families should be supported to prevent or reduce inappropriate or harmful levels of caring; this appears to **contradict stated Government policy that care should be delivered in ways which sustain families**¹. The central issue is whether a child's welfare or development might suffer if support is not provided to the child or family. Services should work closely with family and children's services to identify children with additional family burdens and any safeguarding concerns
 - The draft Bill only provides for local authorities to have regard to the needs of the whole family (of the person to whom the assessment relates) in regulations

¹ *Recognised, valued and supported: next steps for the Carers Strategy* (2010) and *Carers at the heart of 21st century families and communities* (2008). See also *Working Together to Support Young Carers – A Model Local Memorandum of Understanding between Statutory Directors for Children's Services and Adult Social Services*, ADASS and ADCS (2009).

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(clause 12) and it is not clear how a whole family needs assessment will relate specifically to the duties to meet needs for care and support or meeting a young carer's needs for support (including through meeting the needs of the adult with care needs)

- The draft Bill does not require local authorities to identify whether there are children or young people in the household or if they have a caring role; what support they may need or whether there are safeguarding concerns arising from the caring role (or otherwise)
 - There needs to be a stronger framework for a whole family approach so that in meeting adults' needs, adult social services identify and properly support young carers without relying on children to provide part of the care package
4. **Inconsistency between different pieces of legislation:** Through setting eligibility for assessment for young carers on becoming 18 years old under section 17 of the Children Act 1989, the draft Bill is inconsistent with practice guidance of existing legislation that applies to young carers.
5. **Confusing and piecemeal legal framework for young carers:** The Government has said that provisions for young carers will be retained (as provided for under The Children Act 1989, The Carers (Recognition and Services) Act 1995, Carers & Disabled Children Act 2000 and the Carers (Equal Opportunities) Act 2004) but with the law related to adults taken out. This will be confusing and it will not be clear how the law for young carers relates to either the adult's statute for meeting the needs of vulnerable adults or how young carers' rights can be strengthened under the Children Act 1989 on supporting vulnerable children and families. In particular, the three Acts (1995 Act, 2000 Act, 2004 Act) require assessment of a young carer's needs to be taken into account in deciding what community care services to provide to the parent. It is unclear how this interfaces with the draft Bill and proposed national eligibility criteria.

Options for reform

- It is necessary to consider amending the draft Care and Support Bill so that:
 - There are clear provisions for meeting the needs of the whole family so that young carers are identified and inappropriate caring is prevented
 - Adequate provisions for carers of any age caring for adults
- In addition, Carers Trust will work with Government to:
 - Look at consolidating the law as it relates to young carers so that there is a single young carer's statute or repeal the existing legislation and incorporate provisions into the Children Act 1989 as well as consider the interface between the adult's statute and children's legislation (e.g. Children Act 1989) and amending the draft Bill accordingly

What next? Responding to the consultation

Carers Trust strongly encourages carers and Network Partners to respond to the consultation and to feed into the Carers Trust response. **It needs to be made clear that young carers issues have not been adequately addressed in the draft Care and Support Bill.**

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You can contribute your views in the following ways:

- Organise your own consultation event or contribute to a local consultation response with carers and local partners
- Use Carers Trust Consultation Toolkit to help you put together a response – includes more information on the consultation process and top tips
- Respond online by answering the consultation [questions by topic](#) or [comment-by-clause](#);

The consultation deadline is 19th October 2012

- Submit your own written response (using the Consultation Toolkit to help you). Email or send your consultation response to the Department for Health
 - Email: careandsupportbill@dh.gsi.gov.uk
 - And copy in Carers Trust esmale@carers.org OR
 - Write to: Draft Care and Support Bill Team, Department of Health, 6th Floor Richmond House, 79 Whitehall, London, SW1A 2NS

Useful Resources

- Carers Trust Consultation Toolkit – top tips on responding to the consultation <http://www.carers.org/>
- Carers Trust draft Care and Support Bill Briefing 2: Clause by Clause <http://www.carers.org/> - this briefing includes more detail on the whole Bill
- Carers Trust draft Care and Support Bill Briefing 3: What does the Bill mean for young carers? <http://www.carers.org/>
- The draft Care and Support Bill http://www.dh.gov.uk/prod_consum_dh
- Easy Read version of the draft Care and Support Bill <http://www.dh.gov.uk/health/files/2012>
- The Law Commission report http://www.dh.gov.uk/health/files/2012/07/2900021-Reforming-the-Law-for-Adult-Care_ACCESSIBLE.pdf
- Department for Health 8 Factsheets <http://www.dh.gov.uk/health/2012/07/cs-bill-factsheets/>

Contact

For more information, help or advice please contact:

Emma Smale, Senior Policy & Parliamentary Officer, Carers Trust esmale@carers.org

Appendix A: What does the Bill do for young carers on becoming 18?

Clause 39 is for assessment of a child's needs for care and support on transition for children to adult care and support

- This clause applies to any child including young carers who may have care and support needs. This clause specifies that a young person must continue to receive children's services (under the Children's Act 1989) until such a time as adult services have carried out an assessment and are ready to meet needs.

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Implications: This should prevent young people from losing support at the critical point of transition. It only refers to services under the Children's Act 1989 and it should include any social care support that a child receives under other legislation.

Clause 41 aims to ensure better transition between children's and adult support and will enable young carers to undergo an assessment under adult legislation ahead of their 18th birthday, to determine what needs for support they may have at the age of 18, and support planning for their transition to adulthood.

- Young carers approaching 18 may receive an assessment when they or their parent requests one (rather than a duty to assess needs as with an adult carer)².
- A Young Carer eligible for an assessment is a person under 18 years caring for an adult and a child "in need" or part of a family for whom, or for a member of whose family is in receipt of services under section 17 of the Children Act 1989 (clause 41 (3)).
- A young carers assessment must include whether the young carer is able to care and is willing to do so after the young carer becomes 18 (clause 41 (8)) and when the young carer becomes 18 the local authority must decide whether to treat the assessment as an adult's carers assessment (clause 41 (11)). The assessment should include what the care and support needs are and likely to be when the child becomes 18.

Implications: The assessment under the new adult statute would be in addition to any assessment or services received under children's services, but on transition, older young carers will only be able to request an assessment which accounts for their needs beyond 18 if they are a child "in need" under the Children's Act 1989. The draft Bill would replace only the element of this provision which relates to carers over the age of 18. In effect, "carve out" the adult carers' element, since that right to a carer's assessment would be replaced by the provision in clause 10 of the draft Bill. This means that:

- The draft Bill sets a higher threshold for support than currently applies for young carers' assessments and for adult carers' assessments (i.e. on becoming 18 a young carer must be a child in need);
- It would result in inconsistency between eligibility for assessments for young carers under 18 and young carers on becoming 18 and;
- Exclude young carers caring for parents who may receive services under other legislation e.g. currently the Chronically Sick and Disabled Person's Act

However, young carers on becoming 18 will have the right to be assessed as an adult carer providing continuity in assessment; meeting their needs and assessment under section 17 could have advantages for children where there are safeguarding concerns given the scope to support the whole family which is appropriate for reducing harmful or inappropriate caring.

² Under this clause, the Government have clarified that the right to a carer's assessment under section 1 of the Carers and Disabled Children Act 2000, would continue to apply to young carers aged 16-17

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Clause 42 specifies that a needs assessment under section 17 can take place at the same time as a young carers assessment if the child and parents agrees or the local authority believes it is in their best interests (relevant to assessments at transition, clause 39).

Clause 43 is around continuity of services (under section 17 Children's Act 1989) but appears to omit continuity of services provided to young carers under section 1/2 Carers and Disabled Children's Act 2000.

Implications: The omission will be amended so that the same transitional protection applies if the services are provided under the 2000 Act to a young carer reaching the age of 18.

Clause 44 is a power to meet a young carers' needs for support as in the Carers and Disabled Children's Act 2000 and Carers (Equal Opportunities) Act 2004 and the local authority must have regard to any services provided under section 17 Children Act 1989.



Draft Care & Support Bill, July 2012

Consultation Toolkit for local carers' organisations

This toolkit is for local carers' organisations who would like to respond to the draft Care and Support Bill consultation. You may also find it helpful to use the toolkit to help carers contribute to the consultation.

Top Tips

1. **Focus on what the Bill means for carers** - you don't have to respond to every part of the Bill. Make the best use of your time by responding to:
 - Clauses 2-3: Information and advice and diversity and quality of services
 - Clause 7: Duty to provide services to prevent of delay needs for care
 - Clause 10: Duty for carer's assessments based on appearance of need
 - Clause 13: Eligibility framework and national eligibility threshold
 - Clause 19: New duty to meet carer's needs for support
2. **Your views matter** – don't leave something out because you think 'well everyone will say that'. Sometimes it's the number of people all making the same point that causes a change in policy. Changes to policy and proposed legislation are made as a result of responses received.¹
3. **Relate your response to who you are and what you do** - try to relate your views to your own experiences, the service provided by, or philosophy of, the organisation you represent.
4. **Focus on what you know** – you are in the best position to inform policy change because you understand how things work in practice. If you know more about a specific area then go for it! Feel free to raise additional points if you think they are not covered sufficiently in the Bill. If you agree with any proposals, say so in your response.
5. **Back up with evidence** – the best way to make the case for change is by demonstrating what works and why. Try to provide evidence and examples to support your views and argument. This could be number of similar examples or a range of different examples from: your service; your own experience as a carer; your experience working with carers; academic research or materials produced by other charities and local authorities. If you quote from research or other legislation or guidance these should be referenced.

¹ The draft Mental Health Bill (2002) was completely rewritten as result of the level of the response from organisations and individuals

What is the consultation process?

A Draft Bill is a Bill that is published to enable consultation and pre-legislative scrutiny before a Bill is formally introduced into either the House of Commons or House of Lords. This means that any interested individuals and parties such as voluntary organisations can comment on the draft Bill.

You can comment on each part of the draft Bill online and answer questions by topic:

- [Comment by clause](#)
- [Answer questions by topic](#)

What else will happen to the draft Bill?

A Draft Bill is considered, often by a departmental Select Committee in the Commons or by a joint committee of Lords and Members of the Commons. This allows MPs and Members of the Lords to have early influence on the Bill. This process is known as pre-legislative scrutiny.

Key questions to help structure your response

When you are considering your response, think about:

1. What does the law do?

- Does it make it easier to understand what people are entitled to?
- Will it help people access the right support?
- Does it leave anything out which you think is important?
- Is it based on the right approach and principles? (e.g. promoting independence and wellbeing, personalisation, recognising carers)

2. How would the new law work in practice?

- How will it affect carers?
- What will it mean for local carers' organisations?
- Will it help support good practice?
- Will it make things easier or more difficult?
- How will it work with other areas of law or practice, e.g. recent health reforms?

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3. What does the Bill cover?

- The Bill focuses on care and support – financial, practical and emotional help that support people to manage day-to-day living
- Not everything is covered in the Bill and much of the detail will be in regulations so it's helpful to consider:
 - i. Whether it is appropriate to include all the details in primary legislation
 - ii. How policy and guidance may support and develop good practice
- There will be a further opportunity to feed in your views when the regulations are consulted on. This will be after the Bill has passed through Parliament. Usually Orders and Regulations will be accompanied by draft guidance on implementing the order or regulation; these will explain what the order or regulation does and who it applies to

4. How should I respond?

You can **respond to individual clauses online here** [comment-by-clause](#) or by answering [questions by topic](#) but you are also welcome to submit a **written response** considering the draft Bill as it relates to carers. The address to send your response to is on page 8.

A helpful structure:

- State who you are and what you represent (include contact details)
- Summarise what information you are using to respond e.g. experience supporting carers
- Summarise key points and include:
 - what you welcome and agree with
 - what you disagree with
 - what needs clarification
 - what needs amending
 - any questions for the Government
- Outline key arguments under each question or heading (you may like to consider using the headings below)
- Summarise what you recommend in a conclusion

Answering the consultation Questions

The Government have published five consultation questions. These are broad and overarching questions but you may find it more constructive to comment on individual parts of the Bill and in more detail.

Carers Trust have drafted some additional questions that you may like to consider to help structure your response for considering specific parts of the draft Bill. Carers

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Trust have also produced a detailed briefing and in depth analysis of the contents of the draft Care and Support Bill (Carers Trust Draft Care and Support Bill: Briefing 2). To help cross reference this information, briefing 2 is referenced below.

A short briefing looking at key clauses affecting carers is also available (Carers Trust Draft Care and Support Bill: Briefing 1) and further information on what the Bill means for young carers (Carers Trust Draft Care and Support Bill: Briefing 3).

Questions on specific clauses and parts of the Bill affecting carers

General Duties: Clauses 2-7 (Refer to briefing 2, Section 3)

Consultation question:

- Does the new well-being principle, and the approach to needs and outcomes through care and support planning, create the right focus on the person in the law?
- Do the opening clauses sufficiently reflect the local authority's broader role and responsibilities towards the local community?

Additional questions:

The Government consultation questions apply to broad sections of the Bill rather than specific clauses. Carers Trust has drafted additional questions to help consider in more detail the specific parts of the Bill that will affect carers.

On information and advice (clause 2)

- What types of information and advice should be included under this duty?
- What is needed to ensure access to the right information and advice?
- Who should be involved in providing information and advice?
- Are there any specific issues for carers?

On promoting diversity and quality in the market (clause 3)

- Will this duty help diversify the market?
- What else should the law say to help make this a reality?
- What would you expect to see in guidance on this duty so that local organisations can play a key role?

On cooperating with partners (clauses 4-6)

- Are there any partners missing from those listed?
- Are there any specific circumstances in which this duty should apply?
- Will cooperation work well with all the partners listed? How may this duty help greater cooperation?

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On preventing people's need for support (clause 7)

- Should carers' services be referenced?
- What role will carers' services play?
- Is this duty consistent with other parts of the draft Bill?

Assessment of needs: Clauses 8 – 12 (Refer to briefing 2, Section 4)

Consultation question:

- The law for carers has always been separate to that for the people they care for. Is it helpful to include carers in all the main provisions of the draft Bill, alongside the people they care for, rather than place them in a separate group? (this question relates to all the clauses relevant to carers 9-33)

Additional questions:

On assessments (clauses 9-10)

- What are the benefits of a single duty for assessment?
- Should there be any carer's who are excluded from having a carer's assessment?
- Should this duty apply regardless of the level of carer's resources?
- Should assessment consider outcomes the carer wishes to achieve in day-day life and how they can be supported to help achieve these outcomes?
- Should carer's assessments be carried out at the same time as a needs assessment?
- Should assessments be carried out by someone other than the local authority?

On whole family assessments (clause 12)

- Will this provision help identify young carers or other family members in need of support?
- Is it clear how a whole family assessment relates to the duties to meet needs for care and support and a carer's needs for support and meeting a young carer's needs for support?
- What would you expect to see in regulations and guidance on whole family assessments?

Eligibility: Clause 13-15 (Refer to briefing 2, Section 5)

On eligibility (clause 13)

- Is a national eligibility framework helpful?
- Will a national minimum eligibility threshold help carers?
- Will this change the current situation?

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On charging and assessing financial resources (clause 14 and 15)

- Do these proposals look fair?
- Should any types of service be excluded from the power to charge for services?
- Will it be clearer for local authorities when they should charge carers and when they should charge adults with care?

Entitlements to support and meeting needs: Clauses 17-22 (Refer to briefing 2, Section 6)

Consultation question:

- Does the draft Bill clarify individual rights to care and support in a way that is helpful?

Additional questions:

On the duty and power to meet a carer's needs for support (clause 19)

- Does the new law provide for fair and reasonable access to services for carers who have been found to have eligible needs?
- Is it reasonable for carers who are above the financial limit to request that their needs for support are met?
- Is it reasonable to charge carers for support?
- Is the distinction between provision of support to the carer and services for the adult clear and easy to understand?
- How could this duty be simplified or strengthened?
- Should any carer's be exempt from the duty to meet their needs (including carers subject to immigration control)?

What happens after assessments: Clauses 23-26 and clauses 31-33 (Refer to briefing 2, Section 7)

Consultation question:

- Do the "portability" provisions balance correctly the intention to empower the citizen to move between areas with the processes which are necessary to make the system fair and workable?

Additional questions:

On support planning (clauses 23-24 and 26)

- Are carers sufficiently involved in the care planning process?
- Does the "support plan" include all the relevant information?
- Do you agree that other organisations can carry out plans?

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Personal budgets and direct payments: Clause 25-30 (Refer to briefing 2, Section 8)

On personal budgets and direct payments:

- Do you agree with the definition or a "personal budget"?
- Do you agree that the right to request direct payments will help carers?
- Is it helpful that direct payments can be paid to carers on behalf of the adult who needs care?
- Is the clarification helpful in relation to what should happen if an adult is without capacity to request direct payments?

Safeguarding adults at risk of abuse or neglect: Clauses 34-37 (Refer to briefing 2, Section 9)

On making enquiries and Safeguarding Adults Boards (SABs):

- Will these proposals help protect vulnerable adults?
- Is there anything else they should include in relation to carers?
- Is it clear how local carer's organisations may be involved in the proposed safeguarding processes?

Transitions, young carers and parent carers: Clauses 39-44 (Refer to briefing 2, Section 10)

On young carers and parent carers' assessments:

- Should young carers and parent carers have to request an assessment?
- Should there be a duty to meet their needs?
- Do you agree with the new proposals for young carers at transition?
- Would you change anything about these proposals?

Where do I send my response to and by when?

Carers Trust strongly encourages carers and Network Partners to respond to the consultation and to feed into the Carers Trust response. You can do this in the following ways:

- Organise your own consultation event or contribute to a local consultation response with carers and local partners
- Respond online by answering the consultation [questions by topic](#) or [comment-by-clause](#);

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- Submit your own written response (using the ‘additional questions’ pages 4-5 to help you). Email or send your consultation response to the Department for Health:

Email: careandsupportbill@dh.gsi.gov.uk

And copy in Carers Trust esmale@carers.org

Or

Write to:

Draft Care and Support Bill Team
Department of Health
6th Floor
Richmond House
79 Whitehall
London
SW1A 2NS

The consultation deadline is 19th October 2012

What do I do if I have a question or need some advice?

Contact

For help, information or advice, please contact:
Emma Smale, Senior Policy & Parliamentary Officer, Carers Trust
esmale@carers.org

Useful Resources

- Carers Trust draft Care and Support Bill Briefing 2: Detailed Briefing Clause by Clause <http://www.carers.org/>
- A shorter briefing is also available – Carers Trust draft Care and Support Bill Briefing 1: Short Briefing on key clause affecting carers and Briefing 3: What does the Bill mean for young carers? <http://www.carers.org/>
- The draft Care and Support Bill http://www.dh.gov.uk/prod_consum_dh
- Easy Read version of the draft Care and Support Bill <http://www.dh.gov.uk/health/files/2012>
- The Law Commission report http://www.dh.gov.uk/health/files/2012/07/2900021-Reforming-the-Law-for-Adult-Care_ACCESSIBLE.pdf
- Department for Health 8 Factsheets <http://www.dh.gov.uk/health/2012/07/cs-bill-factsheets/>



Draft Care and Support Bill

Carers UK first analysis of main provisions for carers

July 2012

Headlines

This is a draft Bill published on 11 July 2012 which will become the main plank of social care legislation - effectively replacing many statutes from the last 60 years and the three Private Member's Bills which form the cornerstone of carers' rights and which Carers UK drafted and secured.

Carers UK warmly welcomes the announcement of detailed consultation on the draft Bill and the fact that Parliament has the opportunity for pre-legislative scrutiny to discuss the Bill before it fully goes before Parliament – this is a clear demonstration of the value placed in the views of carers, older and disabled people and organisations representing them. The deadline for responses to a consultation on the Bill is 19 October 2012 and Carers UK will be responding in full. We will be carrying out further analyses of different parts of the Bill and looking at further provisions. Our detailed response will be provided at a later date.

It is anticipated that the legislation will come in the fourth session of parliament i.e. 2013/14, but this will not be confirmed until the Queen's Speech in June 2013. Implementation would then be in 2015.

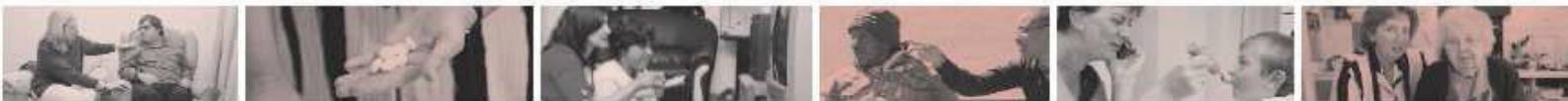
Carers UK has welcomed the draft Bill and the new rights that it contains for carers. This represents an important step forward in the development of carers' rights, their recognition and the vital support that they need.

There will be costs associated with implementing carers' rights which are provisionally planned for 2015. Carers UK will be publishing an assessment of these costs at a later date.

The Bill will represent a wholesale change in the way that carers, disabled people and older people are supported by communities.

Where the Bill is stronger for carers:

1. **New duty on local authorities to promote an adult's well-being (Clause 1) if this includes carers.**
2. **New duty on local authority to 'establish and maintain a service for providing people with information and advice relating to care and support for adults and carers' (Clause 2).**
3. **New duty to promote diversity and quality in provision of services (Clause 3).**
4. **New rights to services for carers following assessments.**



5. **No need to request an assessment now, but automatic assessment if the local authority considers the carer to have needs.**
6. **No requirement to provide regular and substantial care, so any carer with needs, could be assessed.**
7. **New rights to be consulted on the assessment of the person needing care.**
8. **New rights in primary legislation to receive a copy of the care plan and to be consulted.**
9. **Stronger role for advocates for carers and adults needing care.**

Where the Bill needs amendments, additions and clarifications for carers:

1. **Rights for parents of disabled children are less strong compared with adults caring for adults as they must still request an assessment.**
2. **Rights for young carers are less strong as they must still request an assessment.**
3. **Young carers are required to be a 'child in need' under the Children Act 1989 which is restrictive and not in the spirit of prevention – avoiding a child from becoming 'a child in need'.**
4. **Following assessments of young carers, there is no clear duty to provide additional services to the parent needing care under this Bill.**
5. **There are several different and at times confusing definitions of carers.**
6. **It is not clear whether Clause 1 actually applies to carers – needs to be clarified – although the notes state that they are included – the rest of the legislation separates out carers.**
7. **There are new provisions giving local authorities the power to impose charges, however needs assessments still must occur before financial assessments.**
8. **No duty to provide services if a person is a self-funder and they do not ask the local authority to arrange services.**
9. **Potential increased costs for families as local authorities can charge for arranging services for a person needing care or a carer.**
10. **There is no definition of needs.**

Social Care (Local Sufficiency of Supply) and Identification of Carers Bill

This is a Private Member's Bill (a piece of legislation proposed by a backbench MP) currently being promoted by Barbara Keeley MP and has strong cross party support from Sir Tony Baldry MP, Laura Sandys MP, Sarah Newton MP, Stephen Lloyd MP, Caroline Lucas MP, Annette Brooke MP, Diana Johnson MP, Dr Hywel Francis MP, Alex Cunningham MP, Heidi Alexander MP and Sharon Hodgson MP.

This important Bill makes several key provisions which would help support the draft Care and Support. If successful it would make several key changes, placing duties on:

- a) Local authorities to provide sufficiency of supply of social care services.
- b) Local authorities to ensure sufficiency of supply of social care services for disabled people and carers who wish to work or go into education.
- c) NHS bodies to identify carers.



- d) Schools to identify young carers.
- e) Further and higher education establishments to identify young carers.

These important provisions would help support main provisions sought in current government policy and would help to underpin the current legislation.

The Second Reading of the Bill is on 7 September 2012 and we urgently need organisations and carers and disabled people to sign up to support the Bill.

Visit www.carersuk.org/newsroom/item/2644-mp-proposes-landmark-new-social-care-law to sign up your support.

Detailed Clauses in the Bill

Clause 1: Duty on local authorities to promote an adult's well-being.

This covers a range of areas that are listed such as physical and mental and emotional well-being. It also covers participation in work, education and training, social and economic well-being. **Carers UK welcomes this additional focus on work and economic well-being which was not in the Law Commission's proposals. This is a very positive addition.**

Clause 2: Duty on local authority to establish information and advice service.

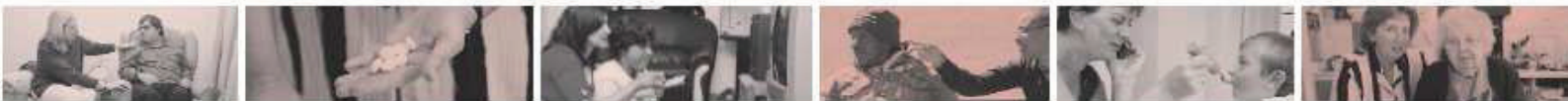
This is intended to ensure that local information services are provided locally and is also intended to cover advocacy although not specifically mentioned. There will be specific areas that the local authority has to cover including the choices and types of care and support, the choice of providers, how to access care and support and how to raise concerns about safeguarding. This provision is intended to cover self-funders as well as those who might be entitled to either assessment or support. Equally, the intention is not for local authorities to provide this themselves necessarily, but ensure the systems are in place i.e. by contracting with external organisations.

Clause 3: Duty to promote diversity and quality in provision of services

This is a new duty which places new duties on the local authority to promote the efficient and effective operation of a market in services for meeting care and support needs, ensuring that people have a variety of providers, high quality services to choose from, sufficient information to make a decision. It also places a duty on the local authority to look at future demand for services and how providers might meet that demand as well as sustainability of the market. Carers UK believes that whilst this Clause goes some of the way to meeting the provisions set out in the Social Care (Local Sufficiency of Supply) and Identification of Carers Bill, there is still a need to ensure sufficiency of supply, not just a market.

Clause 7: Preventing needs for care and support

A new duty on local authority to provide or arrange for services, facilities or resources which will prevent or delay the development of or reduce the needs of care and support of adults. Carers UK would prefer a reference to carers in this particular clause. However, we would argue that in order to prevent further need for care, then investment in carers is critical.



Clause 9: Assessment of needs for care and support

This is the new main provision for assessing a disabled person's need for care and support. The important sub-section (3) states that this must be regardless of the authority's views of the level of the adult's needs for care and support or the level of the adult's financial resources. The needs assessment must focus on outcomes for the disabled person and they must also consult the carer, in so far as it is feasible and any person whom the adult asks the authority to consult.

Clause 10: Assessment of carer's need for support

This new drafting places a duty on the local authority to assess a carer. It does several things that are different to the current legislation. It removes the requirement to ask for an assessment. And it removes the requirement for the carer to be providing regular and substantial care. Instead, the only requirement is that the carer 'may have needs for support – whether currently or in the future'. The requirement is to assess whether they have needs and if they do what they are (or will be in the future).

There is no change to the assessment in the fact that the carer has to be able and continue to be able to provide care, and be willing and continue to be willing to provide care. The Bill also keeps the provisions from the Carers (Equal Opportunities) Act 2004 about consideration of whether the carer wishes to work, or participate in education, training or recreation.

Additionally, the local authority has to consult – in so far as it is feasible – the carer and any person whom the carer asks the local authority to consult – which could be an advocate. This is a new and welcome provision.

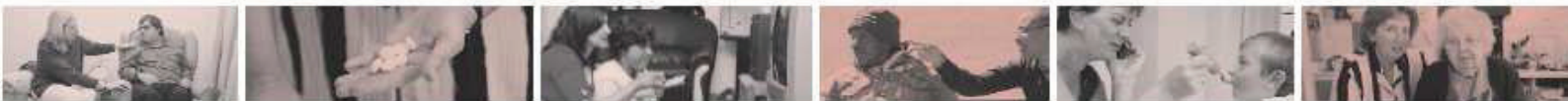
Although the normal exclusions to this right apply where the person is employed as part of a contract or is a volunteer, there is a new additional sub-section (8) which confuses the definition and Carers UK will be submitting new drafting to clarify this.

What is missing in this section is any mention that the assessment is carried out regardless of the authority's view of the level of the carer's resources (Cl. 9(3)(b)) and the fact that the assessment should be looking at outcomes (Cl. 9(4)(b)). Without similar and parallel rights to disabled people, there will not be a level playing field of rights and **Carers UK recommends that assessment processes, including financial assessment are aligned.**

Clause 11: Refusal of assessments

Adults needing care can refuse assessments and the local authority is under no obligation to assess them unless the adult lacks capacity and cannot refuse the assessment in the first place, or is at risk of abuse, neglect or harm.

In the carer's case, refusal of assessment under 11(5) means local authorities do not have to carry out an assessment. However, if the local authority thinks that the carer's situation has changed, or that the person receiving care, then they must assess the carer. If the carer does not want this to happen under 11(7), they have to refuse the assessment again. The area missing for this provision is the fact that if the carer refuses an assessment and the person needing care is at risk, then action needs to be taken. Carers UK will be making this point in our submission.



Clause 12: Assessments under sections 9 and 10 further provision:

This looks at assessments where the local authority must look at the situation of the family – whether this is an adult with care needs’ assessment or a carer’s assessment. This means that this could incorporate the needs of children, siblings, carers, or the disabled person and constitutes a whole family approach.

It also suggests that someone other than a local authority employee could carry out the assessment. Carers UK has had some concerns about the delegation of assessments. Although some may find that the process can be better, there can be a lack of clarity over decision-making, a lack of joined up decision-making and a lack of clarity over the power of the external person to influence the final services decision.

This section allows information to flow to external people. We would have concerns again, about the legal routes by which individuals would be able to challenge processes and decision-making. It is vital that local authorities do not delegate decision-making and that there is a clear open and transparent process.

Clause 13: Eligibility criteria

The legislation provides for the first time that there are set eligibility criteria. Until now, these have been set out in Section 7 guidance which has the force of law. For the first time, the law sets out that the assessment must determine whether the adult or carer has needs and whether they meet the eligibility criteria. There will be a set of regulations to determine levels of need. The White Paper suggests that the threshold will be set at substantial and this Bill sets up the legal framework to do that. An ‘eligible’ need is a need which is defined as one which a local authority has as duty to meet. There will be a number of needs which are not deemed ‘eligible’ which the local authority will not be under a duty to meet.

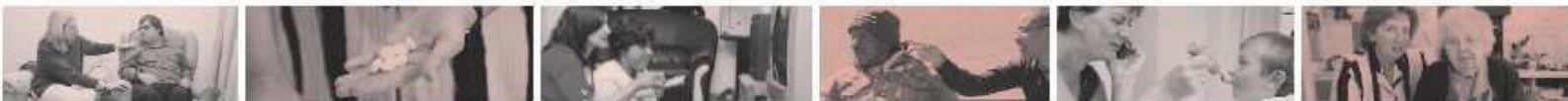
Clause 14: Power of local authority to impose charges

This unfortunately worded section discusses imposing charges for services and covers all those services that are designed to meet needs that a local authority are under a duty to meet for either the adult needing care for their own services or the carer for their own services.

The local authority can also charge for services that they are not under a duty to provide under these proposals for example, non-eligible needs or for people who are above the financial limit for local authority help. For these services, local authorities may also charge for putting in place the arrangements for meeting needs. Up until now, it has only been the services that have been charged for not the ‘management’ or ‘arrangement’ charge.

There is also an important Clause which protects the carer from being charged for services which essentially should be the adult needing care. Under 14(3) if the local authority thinks that the carer’s needs are best served by providing more services to the adult needing care, then it is the adult which is charged.

However, it is not clear where a carer’s need for services starts and where this might be provided to the disabled person, unlike the clarity in existing legislation. **Carers UK is concerned about the use of the words ‘impose’ charging and feel that this is unnecessarily strong particularly when it is a ‘power’ i.e. they can but don’t have to.** Regulations will be introduced which will



look at calculating income and calculating capital and, at present, does not specify which services these cover. The regulations will state that where a person's financial resources exceed a certain level, the local authority will not pay towards the cost of the provision of services. The section doesn't state whether this applies to residential or non-residential care. Currently different rules apply to residential and non-residential care. **This urgently needs clarifying since the Government objective is to 'simplify rules regarding charging and financial assessment, so people understand any contributions they have to make to the cost of their support.'**

Clause 16: Deferred payments

Local authorities can currently defer a charge on a property if a person enters residential care and the value of their home is taken into account. Some local authorities do not actively pursue this policy. The Bill places a duty and a power on local authority, by regulation, to operate a system of deferred payments on a person's home. The key difference in the legislation is that the local authority may now charge interest on those deferred payments, charge for the administration costs, and charge interest on those administration costs. Although some people may prefer to have a deferred payment on a property rather than having to sell it straight away, they will also end up paying more for care than they would do currently.

Clause 17: Duty to meet needs for care and support for adults needing care

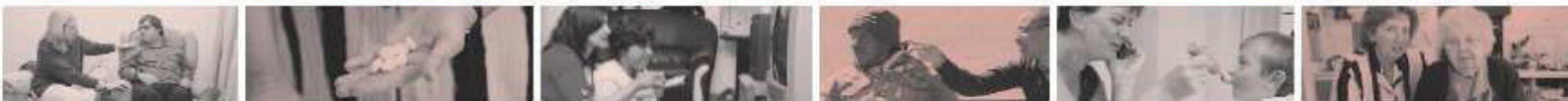
There will be a duty to meet needs within eligibility criteria, having carried out a needs assessment and where applicable a financial assessment if the adult is ordinarily resident. However, the clause appears to introduce a new provision that the local authority no longer has a duty to provide services to people whose resources are above the "financial limit". They only have a duty to provide where the person's resources are at or below the financial limit. If they are above the financial limit and they ask the local authority to provide the services, then they have a duty to do so. Currently, the local authority has a duty to provide services that meet need and can charge for services and recover this charge through the courts if it is not paid. What this introduces is a new provision which removes the absolute duty of local authorities to meet all needs regardless of resources.

Clause 19: Duty and power to meet a carer's need for support

This is similarly drafted to the Clause above with the exception that services may be provided to the adult needing care in order to meet the carer's needs. At this point, similar provisions apply that look at that adult's resources. The adult needing care must agree to the services and support being provided to them. Although this can be challenging, it is an important provision.

Subsection (8) is important as it recognised that if a carer's need for support cannot be met for any reason by providing care and support to the adult needing care, then it must identify some other way of doing so.

The only problem is that there is little clarity about where carers' services end and the services of the person needing care start. This is very clear under the Carers and Disabled Children Act 2000 but there are not such clear definitions in this Bill. Carers UK is concerned that carers could end up having more services that should belong to the person needing care and the carer will be charged for that support.



In the case of breaks for example, they are often described as a service for carers. Whilst it is true that a carer needs a break to continue caring and to maintain their health and well-being – in the absence of the carer, it is the disabled person who needs care, not the carer. This current definition from the Carers and Disabled Children Act 2000 works well. A similar clarifying point is needed in this legislation to prevent carers from being charged unnecessarily for services. Carers already feel that they are paying several times – in lost employment, in saving the state billions through their care and support, through sacrificing their own opportunities in life. Few say they have a choice about caring and it is morally wrong to charge them for something like a break.

What happens after assessments?

Clause 23: Steps for the local authority to take

The local authority is required to meet needs, then it has to prepare a care and support plan, or in the case of a carer – a support plan. So we have different terminology for adults needing care and carers. The adult (but this is not clear whether this includes carers) must be told of the needs that it is going to meet and which can be met by direct payments and help the adult with deciding how to have the needs met.

If they are not going to meet needs, then the adult must be given a written record of the needs or carer's assessment, a written record of any financial assessment and advice and information about what can be done to meet the needs or to prevent or delay the development of needs in the future.

Clause 24: Care and support plan, support plan

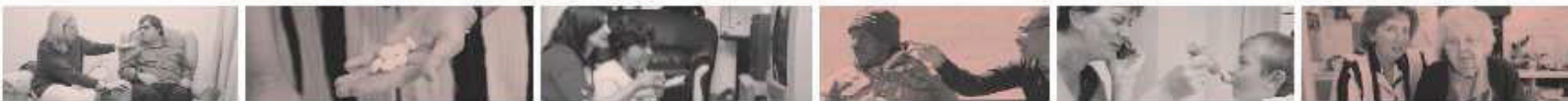
To be clear, the adult needing care will have a care and support plan. The carer will have a support plan. Both duties to each party are similar i.e. each must:

- specify needs assessed
- extent to which they meet the eligibility criteria
- specifies the needs that the local authority is going to meet and how it is going to meet them
- specifies to which outcomes or carer's wishes to work, etc. are to be secured.
- Includes the personal budget for the adult.

If needs are to be met by a direct payment, then plan must also specify the needs which are to be met, how, and the amount and frequency of direct payments. The local authority must consult the adult, carer and any other the person the adult or the carer (respectively) ask to be consulted.

The local authority will be able to authorise another person to prepare the plan, including the person for whom the plan is being prepared, jointly with the local authority. This means that the carer could determine their own plan (as could the adult needing care) and agree it jointly with the local authority. This gives the person much more choice and control. Equally, it means contracting out care planning and development services to external organisations.

Clause 24 also gives the local authority the power to combine care plans of the adult needing care and the carer needing support.



The duties of direct payments are much stronger than currently and a clear presumption in favour of direct payments.

Clause 26: Review of care and support plan, or of support plan

This places duties on the local authority to keep the plan under review for the adult and the carer and, if they think that something has changed, to reassess either or both the adult and/or the carer.

Clause 25: Personal budget

The legislation defines personal budgets for the first time. This is a statement of the amount which the local authority assesses as needing the cost of meeting those of the adult's need which it is required or decides to meet. The amount which on the basis of financial assessment the adult has to pay towards that cost and the basis on which the local authority must itself pay towards that cost, the amount which it must pay.

A personal budget may also specify other amounts of public money that are available in the adult's case for spending on matters relating to housing, health care or welfare.

Clauses 28, 29 and 30: Who can receive direct payments

These sections cover who may receive direct payments and help to clarify the law particularly around people who lack capacity. Carers UK has had many cases from carers refused, particularly in the case of dementia, where someone lacks capacity to consent to a direct payment. This should clarify the situation for them.

What is important is where a direct payment can be used to pay a family member. With most legislation being repealed, it is important that this is clarified in regulations.

Clause 31: Continuity of care when an adult moves

These are the main provisions which have been called "portability of care". The principle is basically that the new local authority has to provide the level of care that the person needing care used to get until they are reassessed. The Clauses stipulate that the receiving authority has to provide information to any carer and has to assess the carer.

Safeguarding adults at risk of abuse or neglect

Clauses 34 to 38: Where a local authority has reasonable cause to suspect that an adult in its area has needs for care and support is experiencing risk, abuse or neglect and as a result is unable to protect themselves, they have to make enquiries to decide what action to take. These sections also establish safeguarding boards and also place a duty on local authorities to protect property of individuals who are being cared for away from home. They can also recover reasonable expenses from the adult for carrying out the latter duty.

Transition for children to adult care and support

Clause 39: Assessment of a child's needs for care and support

A parent (or carer, but with different definition) can request an assessment of the child which is defined as a child in need under S. 17 of the Children Act 1989. This has to look at what the



child's needs are and what they are likely to be when the child turns 18. The problem in this section is another and new definition of carer which is 'in relation to a child in need, means a person, other than a parent, who is providing care for the child whether or not under or by virtue of a contract or as voluntary work'. Carers UK is concerned that there are two conflicting definitions of carers which are contrary to each other. In this section, the 'carers' views take equal weight to a parent's request for an assessment and this needs to be balanced.

Clause 40: Assessment of a child's carer's needs for support

This is where carers, including parents, must request an assessment. This is a higher level bar than will exist for adults caring for adults who do not have to request an assessment, but where it is the duty of local authorities to carry out an assessment if they think the carer may have needs.

If requested, the authority must assess whether the carer has needs for support and if they do, what they are and what they are likely to be when they are 18. The only difference again, is that the authority has to consult the carer and anyone the carer asks them to consult.

This is where the term carer reverts back to the same definition in the Carers (Recognition and Services) Act 1995, i.e. excluding anyone who is caring as a volunteer or whose care covered by a contract or employment. However, this definition is also different to the one set out in Clause 9 earlier. **Carers UK believes it is vital that definitions are consistent throughout the Bill. This is Carers UK's preferred definition under Clause 40.**

Clause 41: Assessment of a young carer's needs for support

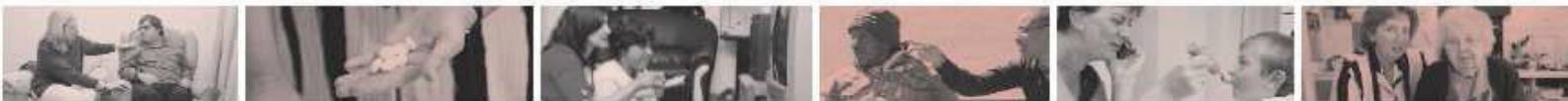
In this Clause, the young carer also has to request an assessment or their parent has to. This is a higher test than exists for adults caring for adults in Clause 9 when the local authority has a duty to assess if they think the carer may have needs. There is also a higher test in that the family, or a member of the family, are someone whom services **are** being provided under section 17 of the Children Act 1989. This is a higher test than exists in currently legislation and a higher test than the adults caring for adults provisions. It also excludes young carers who are caring for parents since they may not have services provided under the Children Act 1989 but under relevant adult social care legislation e.g. currently the Chronically Sick and Disabled Person's Act. This section needs to read, **"someone whom services may or are being provided under s. 17 of the Children Act 1989 or a parent who is receiving care and support under this Sections... of this Act."**

What it usefully and newly does is see whether the young carer has needs for support, what those needs are and what they are likely to be on their turning 18. This is useful for transition planning for young carers who become adults.

There are similar provisions compared with adults about the young carer wishing to work, education, training and leisure.

Clause 42: Further provisions to s. 39 to 41

This section states that a child's assessment can be combined with that of a parent, young carer, etc. but only if the child and the carer agree to have a combined assessment or the local authority believes it in their best interests and the carer agrees to a combined assessment.



This is where the lack of consistency in definitions becomes problematic as the work care is used but it is not clear from the text which definition is being used.

Clause 43: Continuity of services under s. 17 of Children Act 1989

This Clause helpfully establishes if there is any dispute or delay of assessment for a child – whether disabled or a young carer upon reaching age 18, the duty of care and services still lie with the local authority (i.e. children’s services) until an assessment can be undertaken and a decision reached.

Clause 44: Power to meet child’s carer’s needs for support

This effectively reflects of the provisions of the Carers and Disabled Children’s Act 2000 and aspects of the Carers (Equal Opportunities) Act 2004 give the local authority the power to provide services – check against C(R&S) Act and CDC and CEO Action. A local authority must have regard to any services being provided to the carer under s. 17 of the Children Act 1989.

There are several areas missing here:

1. The level of assessment trigger is higher than that of adults caring for adults.
2. Young carers have to be in receipt of 1989 Children Act services rather than ‘may be in need’
3. If, having carried out the assessment of the young carer, and young carer has needs, there also has to be consideration of whether the parent needs additional care under the relevant sections of this Bill. It is not sufficient to rely on the all encompassing services under s. 17 Children Act services. This would firmly place the duty of care and duty to provide services on adult social services where there is a parent who is in need of care services.

Clause 45: Recovery of charges, interest etc.

This section comes under the enforcement of debts which puts regulation and common law into primary legislation to allow local authorities. This also places a duty on the person needing care and the carer to ensure that they fully disclose relevant assets. This doesn’t matter whether failure to disclose was fraudulent or not. Given that financial assessments are so complex and so many people misunderstand them, it is vital that disabled people and carers are given full information about financial assessments.

Clause 46: Transfer of assets to avoid charges

This section puts into primary legislation other legal and common law provisions which look at deprivation of assets. The problematic part of this section suggests that all that needs to happen to invoke this particular clause is the fact that the asset is transferred by either the person needing care or the carer. The way the clause is drafted does not currently require the transfer as being undertaken with the intention of avoiding charges for having the adult’s needs being met. It is vital that this is clarified since there may be a number a reasons why assets may be transferred for many years before a person needs care.

Clause 49: Registers of sight-impaired adult and disabled adults

This section places a duty on local authorities to hold registers of sight impaired adults i.e. these are compulsory. However, in terms of current disability registers, there is no requirement to have these, although this legislation gives local authorities to power to maintain these.



Schedule 1: Safeguarding Adults Boards

This sets out the provisions by which these will operate.

Schedule 2: Discharge of hospital patients with care and support needs

The main provision which currently covers this provision is the Community Care (Delayed Discharges) Act 2003 which is being abolished. The NHS Trust must notify the local authority of care and support needs and before doing so should be consulting the patient and the carer. The consultation with carers is very welcome. Importantly, the Schedule contains the provisions and duties to assess carers that exist in the 2003 Act. Carers UK warmly welcomes these provisions being retained.

Schedule 3: Direct payments for s.117 after-care services under 1983 Mental Health Act

This covers direct payments for after-care services.

Schedule 4, Part 1 – Repeals and revocations

This section deals with repeals and revocations. The three Carers Acts from 1995, 2000 and 2004 are not being repealed, but these rights are expected to replace the rights contained in those Acts in the future.

Community Care (Delayed Discharges) Act is being abolished, so too are clear free services for intermediate care. There are provisions under the charging clauses for the Secretary of State to make regulations to make certain services free of charge. Carers UK will be arguing strongly for the continuation of free 'reablement' or intermediate care services.

What next?

The deadline for responses is 19 October 2012 and Carers UK will be responding in full. These comments should be addressed to: careandsupportbill@dh.gsi.gov.uk

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