

The draft Care and Support Bill – The law for carers

"There should be a transparent system by which carers are able to see whether they are entitled to support from local authorities for services they provide to the cared-for. The current state of the law in this area is confusing and left to chance too much"
(Garden Court Chambers)

For the first time, carers will be recognised in the law in the same way as those they care for. This factsheet describes how the draft Bill sets out carers' legal rights to assessments and to support to help them in their caring role.

Who is a carer?

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

The draft Care and Support Bill relates in the main to adult carers – people over the age 18 who are caring for another adult. This is because young carers (aged under 18) and adults who care for children are usually provided for under children's legislation. However, there are some clauses in the draft Bill to support these people better as they reach the age of 18 years.

Why do we need to change the law?

The existing law for carers is split across three main Acts of Parliament, all of which mix provisions for carers of all ages. It is complicated, and makes it difficult for carers to understand their entitlements and to access the support they need to help them balance their caring role, and improve their health and wellbeing.

The existing law looks at carers in isolation, separate to the law for the people they care for. This reinforces the idea that carers are outside the mainstream of care and support.

The current law also treats carers differently to the people that they support. Carers do not have a legal right to receive support – local authorities

only have a power to provide carers' services. This means that, where local authorities provide carers' services, the access to them, and the variety of support on offer, varies considerably.

Carers' rights to an assessment are also different, and less generous than those of the people they support. The way support is provided in practice is not fair or consistent.

What does the draft Bill do?

Assessments

The draft Bill creates a single duty for local authorities to undertake a 'carer's assessment'. This replaces the existing law, and removes the requirement that the carer must be providing "a substantial amount of care on a regular basis". This will mean more carers are able to access an assessment, and that the duty is comparable to that for the people they support (see *factsheet 1*).

The aim of this assessment is to consider the impact of caring on the carer and to determine whether the carer has support needs and what those needs may be. It must also consider other important issues, such as whether the carer is able or willing to carry on caring, or whether they want to work.

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

Eligibility

When the assessment is complete, the local authority must determine what their support needs are, and whether those needs are 'eligible' for support.

The local authority must use an eligibility framework, to be set out in regulations. These regulations will provide a new framework for determining eligible needs for carers, alongside the approach for the people they care for.

After deciding whether the carer has eligible needs, the local authority and the carer will then need to think about what type of support the carer might benefit from. This might include helping the carer to take a break from their caring responsibilities, such as getting help with housework or gardening, buying a laptop to keep in touch with family and friends, or becoming a member of a gym so they can look after their own health and wellbeing.

It may be the case that the best way to meet a carer's needs is by providing care and support directly to the person that they care for, for example by providing replacement care to allow the carer to take a break. The draft Bill makes clear that it is possible to do so.

Charging and financial assessment

In recognition of the contribution that carers make to the local community, in most cases local authorities will not charge for providing support to carers. However, local authorities do have a power to charge for support, and might do so in some circumstances. If the local authority does decide to require a charge, then it must carry out a financial assessment to determine whether the carer can afford to pay (see *factsheet 2*).

If supporting a carer involves providing care to the person cared for, and the local authority chooses to charge for that type of care, then the authority must carry out a financial assessment on the person who is cared for. This is because the care would be provided to that adult directly, and not to the carer.

Clear entitlements to support

The draft Bill creates a new duty for local authorities to meet carers' eligible needs for support. This is equivalent to the duty to meet the needs of the adult needing care (see *factsheet 3*). This provides carers with their first ever legal entitlement to support, on the same legal footing as the people for whom they care.

The key conditions for a carer's entitlement is that they have assessed eligible needs, and that the person for whom they care is ordinarily resident in the local authority area.

Support planning

After determining whether the local authority must meet a carer's needs, it must then help the carer to decide how they want their needs to be met. This process of support planning is also set out in the draft Bill for the first time (see also *factsheet 5*).

Carers should receive a personal budget, to show them the costs of meeting their needs, and how much money is available to them. They will then have a right to request that the local authority make a direct payment to them, to give them control over how their support is provided. All of these provisions apply equally to carers as to the people they care for. They must also have regular reviews to ensure their needs continue to be met.

Young carers

Children under the age of 18 who care for adults will be provided with children's services, rather than adult care and support. However, when they reach the age of 18, the responsibility for their support will switch to adult services.

The draft Bill includes new provisions to enable adult social care to take part in transition planning before the 18th birthday, by assessing a young carer early, on their request. There is also a new duty to continue any children's services which a young carer is receiving past the age of 18, if adult care and support is not in place. This will ensure there is no gap in support at this important time.

Parent carers

It is also important that parent carers can access the support they need. There may be some types of support which are only available through one route, for instance an adult carers' centre. In the current law, parent carers are assessed under children's law alongside the child they care for, which means that they may not always be able to get some services.

The draft Bill includes provisions which mean that adults caring for children can be assessed under adult law, and the local authority may meet their needs under adult legislation, as well as through children's services.

FURTHER INFORMATION

- Statutory guidance on assessment and eligibility: *Prioritising Need in the Context of Putting People First* (February 2010)
- *Recognised, valued and supported: next steps for the Carers Strategy* (November 2010)
- See also *factsheet 1* on assessments and eligibility, and *factsheet 2* on charging and financial assessments, *factsheet 3* on the core entitlements to care and support, and *factsheet 5* on care and support planning.