Care Bill Briefing

October 2013

Introduction

The adult social care system in England is in crisis and needs urgent reform. The Care Bill is a vital part of the changes that are necessary. Age UK urges Parliamentarians to support this important Bill that clarifies and brings up to date the legal framework of the care system.

Significant steps have already been taken in the House of Lords to improve the Bill but it could be strengthened further. We would particularly like to see the Bill further amended to:

- **Ensure that people with moderate care needs are eligible to receive support.** Many people do not realise that access to the provisions of the Care Bill, including starting the counter on the care payments which accumulate up to the £72,000 care cap, will only apply to people whose care needs are deemed to be ‘eligible’ for local authority support. It is vital that the national eligibility criteria should be set low enough to make a difference to people’s lives before they reach a ‘critical’ level of need.

- **Improve safeguarding** for people at risk of abuse and neglect, and improve access to redress mechanisms if someone’s human rights are infringed.

- **Ensure that the cap on individual spending on social care is implemented fairly,** based on a proper consideration of individual care needs and on eligibility criteria that are not unreasonably restrictive. In addition, the proposed national deferred payments scheme, intended to ensure that people do not have to sell their homes within their lifetime, must cover the full costs of living in residential care.

- **Ensure the assessment process is fair for everyone** by ensuring local authorities do not unreasonably cut corners through the use of unqualified assessors or an over reliance on digital, remote, assessment tools.

- **Strengthen access to advocacy.** The Bill has already been amended to give an individual the right to an advocate if they are ‘unbefriended’ but we believe that where there is family disagreement on the best type of care or a low level of understanding of the assessment process, someone should also have the right to request an advocate.

The current and future funding of adult social care is likely to be ‘the elephant in the room’ throughout the progress of this Bill. Social care funding has declined by £710 million in real terms since the Government came to power in 2010 (*Age UK analysis of DCLG Revenue Account Data. Inflation calculated using RPI*). This is at the same time as the population of over 85s, the cohort most likely to need social care, continues to rise. So budgets are falling while demand is rising. Additional cuts to local authority budgets in 2014/15 are very likely to impact further on councils’ social care budgets.
The Care Bill offers an ambitious and positive vision for the future of social care for current and future generations. It guarantees an individual’s wellbeing and protects them from unreasonable costs. But in the current funding climate, the sad truth is that this vision cannot possibly be realised. This shortfall in funding must be addressed. If this doesn’t happen we fear that public confidence in the care system will be seriously undermined. The Government would also be open to criticism for rightly lauding a Bill which potentially offers so much whilst at the same time, failing to provide the means to enable its vision to be realised.

1. Ensure people with moderate care needs are eligible to receive support.

What is the problem?

Care and support is delivered locally, with a high degree of variance in the services offered and the needs thresholds that people must meet in order to qualify to receive care. With ongoing cuts to local authority budgets there are now signs that the financial pressures they are under are having a catastrophic impact on care services. Despite councils increasing the proportion of their overall spending on care services, falling council budgets in real terms mean local authorities are rationing care more severely than ever.

Why does it matter for older people and their families?

Because of these funding constraints the number of people over 65 supported by local authorities has dropped consistently over the last three years. We continue to see a trend towards tightening eligibility thresholds, with 85 per cent of local authorities now providing care only to people assessed as having ‘substantial’ needs or above. Community based services like lunch clubs and fitness classes - a lifeline for those on their own - have also been cut back, with the numbers of older people they help declining from 958,000 in 2009/10 to 802,000 in 2011/12. Unless those older people assessed as falling outside the statutory system can afford to pay privately for services, or have family and friends able to help, it is likely that they will go without support altogether. This year we estimate that the number of people with unmet care and support needs stands at more than 850,000.

How could it be resolved?

The Care Bill does offer a number of positive proposals to reduce the ‘postcode lottery’ in how people are treated when they apply for care and support across England. For example, there are measures to ensure a single national eligibility threshold for care services, alongside a new assessment process and eligibility criteria. However, just as important is ensuring that the new
threshold is set by regulations at a decent minimum level. For Age UK that must mean ‘moderate’ or its equivalent in the new system.

If the Care Bill is not merely to be a technical exercise that tidies up a variety of social care’s legislative loose ends, then it must make a tangible difference to the lives of people with care and support needs who are currently, in effect, ignored by the system. It is absolutely critical that this legislation makes access to social care services more equitable and easy to understand.

The Bill could be strengthened by linking eligibility for social care to the achievement of outcomes based on the individual’s wellbeing, as defined in the Bill. Amending the legislation in this way would make sure that commissioners of services would be required to consider how to help someone achieve all aspects of wellbeing set out in the Bill.

Ensuring that local authorities plan sufficiently to meet the diverse needs of their populations and promote quality and choice in services already forms part of the Care Bill. These provisions could be strengthened by requiring service commissioners to monitor the sufficiency of social care provision in their area, and to take action if they are inadequate when compared to local demand, including demand from self-funders. Similarly Clause 8 of the Bill - which describes the kinds of support which local authorities must offer - should be extended to make clear that support does not just mean ‘traditional’ social care services, but should also include things like transport.

2. Improving Safeguarding

What is the problem?

For the first time in England, the Care Bill will include legislative measures to protect adults from abuse. This is an important step forward in better protecting older people from risk. Scotland already has legislation to protect adults from abuse and Wales is in the process of developing its own version. It is important that we learn from the experience of other UK nations. In particular, we need to ensure England’s legislative framework is broad enough to protect individuals across all social care settings.

As things stand within the Care Bill, despite the new safeguarding provisions, we are not all equally protected wherever it is that we receive social care services. This is because the Human Rights Act may or may not apply to an individual, depending on how their care is funded. Age UK believes this is iniquitous and must be changed.

Why does it matter for older people and their families?

People who use social care services may receive intimate care, be moved from place to place or have diminished mental capacity. In all these situations and in many more, they are potentially vulnerable to neglect and abuse of various kinds. Regardless of how their care is funded the law should protect them against the risk of harm. For two people in the same social care setting to be entitled to different levels of legal protection, depending on how their care is funded, makes no practical sense. Moreover, the only realistic way of creating a culture of adult safeguarding is to ensure the same rights apply to everyone in receipt of care, across all settings.

How could it be resolved?

We believe the scope of the Care Bill should be extended by broadening the definition of adults at risk of abuse to those who ‘may have’ needs for care and support, rather than only those who
are ‘deemed eligible’ to receive support. This will include people who are isolated and not in touch with care services and who as a result may never have been assessed as having care and support needs.

The Bill’s scrutiny committee recommended that corporate responsibility for abuse should be borne by the care provider as well as by the individual committing acts of abuse. Age UK believes this recommendation should be accepted by the Government.

The Government should use the Care Bill to close the existing loopholes, meaning people who are vulnerable to having their rights infringed are all within the scope of the Human Rights Act, and so will have an equal right to redress.

The Bill also includes powers for local authorities to delegate the carrying out of statutory functions such as assessment to independent sector agencies. It must be made clear that in this situation such agencies are also subject to the Human Rights Act.

In responding to the Department’s separate consultation about whether additional powers of entry are needed, where abuse or neglect of an adult is suspected, Age UK has argued that such powers are required where a third party is denying access to the person. While we do not expect new powers to be in the Bill itself, we would like the Bill to make provisions to enable and require the Secretary of State to issue regulations on this issue.

3.1 Ensure that the cap on individual spending on social care is implemented fairly

*What is the problem?*

The current care funding gap results in pressure on family and informal carers and severely affects older people who are missing out on support. However, it is equally important we solve the issue of how we fund care in the long term, whilst protecting people from the risk of catastrophically high costs and ensuring they are able to plan to meet the cost of care in a fair and sustainable way.

In February 2013 the Government announced that it would implement the proposals of the Dilnot Commission on Funding of Care and Support in 2017. This implementation date was then brought forward to 2016 in this year’s budget. Age UK was very pleased the Government decided to implement the Dilnot proposals, but disappointed that they opted for a £72,000 limit on costs before the State steps in to pick up the bill – considerably higher than the level recommended in Andrew Dilnot’s report. When considering these figures it is important to recognise that they do not apply to the everyday costs of someone living in residential care; an individual would still have to pay up to £12,000 a year on bed and board to meet these expenses, even once their care costs had reached the £72,000 limit. We would like the Government to reduce the limit over time.

However, we were pleased that the Government also announced that it was raising the upper limit for the residential care means test from £23,250 to £118,000. This means many older people will receive at least some help with their care costs.

*Why does it matter for older people and their families?*

Everyone’s circumstances are different and how these changes affect each individual will depend on what kind of care they need, how long they need it for and on their financial situation. About three quarters of us will need some care as we get older, but while about half of us can expect to
pay out about £20,000, 1 in 10 people will spend over £100,000. The bill can even run to hundreds of thousands of pounds for an unlucky few.

The Government estimates that when all these changes come in about 1 in 6 of all the older people who need care, or about 100,000 individuals, will benefit to at least some extent from them by 2025. However most older people will still have to pay something towards their care, and many will still have to pay quite a lot. Only those people with less than £14,250 in savings and really serious care needs will get their care free.

How could it be resolved?

The Care Bill contains paving clauses allowing the Government to introduce regulations setting out the level of the cap on social care costs and the change to the care means test. This is an appropriate way to legislate for figures which will need to be altered over time. However, during the passage of the Bill we would like to see the Government making commitments about the timetable for the introduction of the higher means test threshold.

We also believe that a commitment to implement a national deferred payments scheme should be included on the face of the Bill. This would mean that regardless of where someone lived, they would not need to sell their home to pay for care within their lifetime and could instead defer the payment of care costs until their estate was being settled following their death.

The Bill must also be clear on what is included in the deferred payment system. The amount people are be entitled to defer must be sufficient to cover the full costs of living in residential care. This should include fees, which may substantially exceed the local authority’s ‘usual rate’; living expenses, which are likely to be substantially higher than the level of the currently inadequate Personal Expenses Allowance; interest on the deferred payment; and the costs of maintaining the property.

3.2 Top-ups and charges

What is the problem?

At present people who are placed in care homes by local authorities are means tested and charged under national rules. However, many people are shocked to realise that local authorities often demand additional payments over and above these charges in the form of ‘top ups’ from a third party, usually a relative. The legislation that enables local authorities to request such top ups, the ‘Choice of Accommodation Directive’ is intended to enable the person to choose a care home that is more expensive than the local authority would normally pay, given the person’s needs. However this system is widely abused, with local authorities citing ‘usual rates’ that bear little relation to the market price of care or being reluctant to increase their ‘usual rate’ where the person has particular needs which increase the cost of care. As a result, over a quarter of care home residents pay top up fees.

Why does it matter for older people and their families?

Social care is means tested and people with relatively limited resources may be required to devote a large part of their income to paying for care. Older people who are carers may be particularly affected as charges may wipe out a substantial part of a household’s income and assets, with the result that a carer may face long term impoverishment.
How could it be resolved?

As the Bill stands Clause 30 does nothing to deal with this unacceptable situation. It should firstly require that the local authority should take account of actual market conditions in setting its ‘usual rate’; should make clear that the amount the local authority agrees to pay must be varied if it is necessary to meet the individual’s assessed needs; and that a third party top up cannot be required unless these two conditions have been met. Charges should be limited to what is ‘reasonably practical’ for the person to pay.

4. Ensure the assessment process is fair for everyone

What is the problem?

The assessment process is the gateway that everyone who wishes to access care and support needs to pass through in order to have their needs met. However it is intended to be more than this, and the Bill is intended to ensure that following assessment, even people who do not qualify for local authority support will receive some help to meet their own care needs, including advice and information. With the implementation of the spending cap, assessment is also important in determining whether a person’s spending on care will count towards the cap.

The assessment process is therefore more important than ever and without a clearer legislative framework governing how this process will operate, many fear that councils could use unqualified assessors or make inappropriate use of digital, remote, assessment tools.

Why does it matter for older people and their families?

Getting a fair assessment of needs is vital to ensuring that those needs are adequately met. We know that older people often under-report the problems that they have and it can take a skilled professional to spot the gaps in their account and uncover their underlying problems in getting on with their daily lives. Only by getting a fair picture of social care needs will the right care package be put in place. We fear that in some cases an inappropriate assessment process could filter people out of the care system when they should be receiving support.

The Bill has been amended in the House of Lords to improve this process. Compared to the initial draft Bill there is a clear separation between assessment of need and subsequent consideration of how needs should be met, as recommended by the Law Commission. This is particularly important in ensuring that needs which are being met by a carer and therefore the carers’ contributions are recognised and valued. The Bill has been strengthened, with requirements to involve appropriately skilled professionals where necessary but there is still room for improvement.

How could it be resolved?

It is important that the Bill ensures that the initial assessment that someone receives is sufficiently skilled to ensure that no one falls through the net. Some people might prefer to assess their own needs. This should be possible but it should still be down to the local authority to ensure that they have enough information to properly consider the person’s needs, which might mean asking some more detailed questions.

Regulations issued under the Bill must set out a clear assessment process that ensures that the needs of individuals will be properly considered. The Bill requires that the Secretary of State should
issue regulations, however we would like to see clearer commitments about what those regulations will contain.

5. Strengthen access to advocacy.

What is the problem?

Some people need support to put across their views and experiences clearly and if they do not receive this from an independent advocate they may not be able to express what they want or need from the social care system. Advocacy helps people’s voices to be heard and enables people to stay in control of their lives. But currently the provision of advocacy remains patchy, so whether you are properly involved in important decisions about your life can depend on where you live.

Why does it matter for older people and their families?

Independent advocates provide intensive support, especially to people who find it hardest to express their views and needs, or make decisions about their care. They ensure that people’s voices are heard, that they won’t have to face the often intimidating and complex process of council assessments alone. This then makes sure that they get the care they need when they need it.

Age UK and the Care and Support Alliance has welcomed a Government decision to guarantee that tens of thousands of people each year who would struggle to navigate the social care system alone can turn to an independent advocate. We have been campaigning for a right to advocacy since the Bill was introduced to Parliament in draft form last year.

However the right to an advocate will only apply to those who are ‘unbefriended’ – which means that people who have family or friends with them but who still need this specialist support won’t be able to access it. Sometimes families disagree about what the right kind of care is. In these circumstances, ensuring an individual can access advocacy is particularly important.

How could it be resolved?

We would like to see a right to advocacy or other appropriate support if someone needs this to be able to participate in the assessment process. This might not only apply to people who have no friends or relatives to assist them. The Bill should be amended to secure this right in law.

If you would like to discuss any of the issues raised in this briefing please contact Angela Kitching, Head of Public Affairs at angela.kitching@ageuk.org.uk or 020 303 31493