

## Briefing 2: In depth briefing on the Care Bill

June 2013

### Introduction

The Care Bill simplifies, consolidates and improves existing legislation, “putting carers on an equal legal footing to those they care for and putting their needs at the centre of the legislation”.<sup>1</sup>

The [Care Bill](#) is the amended Draft Care and Support Bill. The Draft Bill has evolved into the Care Bill following the Joint Committee’s scrutiny and consultation process (see [here](#) for Carers Trust’s submission). The Bill has been further amended following the Dilnot Report<sup>2</sup> and the Francis Report.<sup>3</sup>

This briefing examines the Bill in detail. For a quick summary of the key aspects for carers and carers’ services, please read Briefing 1. This briefing focuses on Part 1 of the Bill which has the most significance for carers. It analyses the Bill clause by clause; key changes from the Draft Bill and its implications for carers and carers’ services.

- Section 1: What does the Bill mean for carers
- Section 2: General duties
- Section 3: Assessment of needs
- Section 4: Eligibility
- Section 5: Entitlement to support and meeting needs
- Section 6: What happens after assessment
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- Section 8: Safeguarding adults at risk of abuse or neglect
- Section 9: Transitions, young carers and parent carers
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### Section 1: What does the Bill mean for carers

#### 1.1. 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.

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<sup>1</sup> The Care Bill explained: Including a response to consultation and pre-legislative scrutiny [here](#).

<sup>2</sup> Commission on Funding of Care and Support (2011) Fairer Care Funding: The Report of the Commission on Funding of Care and Support.

<sup>3</sup> Independent Inquiry into care provided by Mid Staffordshire NHS Foundation Trust January 2005 – March 2009, Chaired by Robert Francis QC (2013). London: The Stationary Office.

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## 1.2. Overarching aims and principles

The Care Bill will modernise social care legislation and for the first time treat carers as equal to those they care for. The Bill aims to prevent and reduce needs through the provision of information and advice. It will enable people to be actively involved in, and plan for, care and support provision. There will be a national framework of eligible needs but even those without eligible needs will still have access to information, advice and options. The Bill will reform charging and will place a cap on care costs.

## 1.3. What's new for carers in the Care Bill?

- Duty to promote well-being extended to include carers (clause 1)
- New duty for local authorities to prevent and reduce needs for care and support for carers (clause 2)
- New duties for local authorities to integrate services and provide information and advice (clauses 3 & 4)
- Local authorities must establish and maintain a care and support market and promote diversity and quality in provision of services, including sufficient provision to enable carers to participate in work, education and training (clause 5)
- New single duty for carers assessments based on appearance of need, will now include consideration of day to day outcomes and financial assessments will only be carried out after a needs assessment (clause 10)
- Whole families can be involved in needs assessments (clause 12)
- New duty to meet carers' needs for support (clause 20)
- National eligibility framework and standards for meeting needs of adults with needs and carers with care and support needs (clause 13)
- Duties for assessing needs for adults with care needs, carers, children with care needs and young carers at transition have been amended to include consideration of what support and resources are already available to an individual which could meet their needs (clauses 9, 18, 10, 56-57 and 61)
- Carers should be consulted on care and support plans; carers can prepare plans jointly with local authorities (or other organisations) (clause 25)
- Right to a support plan to help carers decide how their needs should be met; carers can request a copy of the care and support plan (clause 25)
- 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 26 and 31)

## 1.4. New areas in the Care Bill

- **Dilnot recommendations:** There are new clauses on long-term social care funding, including a cap on the amount individuals will have to pay over their lifetime on care costs (clauses 15 & 16)
- **Francis report recommendations:** A new part of the Bill covers recommendations from the Francis Inquiry including ratings for care homes and hospitals (Part 2)
- **Integration:** There is an increased emphasis on integration in the Bill particularly between health and social care. This is a crucial area for carers, for example when the person they are caring for is discharged from hospital

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## 1.5. Areas for further clarification

- **Eligibility:** Regulations detailing what kinds of needs will make an individual (including carers) eligible for support and who will be financially eligible have not yet been published (clause 13 & 17)
- **Asset Based Approach:** New clauses which were not included in the Draft Bill could mean that 'friends, family or others' are unduly relied upon to meet care and support needs
- **Charging:** Carers may have to pay for the cost of their own support where they have financial resources above the financial limit, but the Bill needs to be clearer about the difference between a service provided to carers and services for disabled adults (clause 14 & 20)
- **Definitions:** Carers are defined as adults who care for adults and young carers are those who care for adults, but clarification is needed for carers who may be looking after a child, sibling or another friend or relative
- **Young Carers and parent carers:** There are no provisions in the Bill for young carers prior to the transition to adult social care and unlike adult carers, parent carers will still have to request an assessment and be undertaking a 'substantial and regular' amount of care to be eligible for support.

## Section 2: General duties

### 2.1. Clause 1: Individual Well-being

A leading principle in the new care legislation is a new duty for local authorities to promote an individual's well-being. Well-being refers to an individual's: mental and physical health, personal dignity, protection from abuse and neglect, participation in employment, education and training, social and economic well-being, personal relationships, contribution to society and control over day-to-day life.

In carrying out this duty the individual is 'considered to be best-placed to judge' their own well-being and the local authority must refer to their 'views, wishes and feelings' 1(3). A local authority must have regard to 'all circumstances' and not base their judgements purely on age, appearance or behaviour 1(3)(e).

#### **What does this mean?**

This duty has been clarified and the well-being principle now clearly applies to carers, 1(3)(f). This principle places carers on an equal footing as those they care for, ensuring their right to achieve day to day outcomes alongside their caring responsibilities. Individuals are to be actively involved in the decisions about their care and support needs giving them greater control and influence over the local authority's provision of services.

### 2.2. Clause 2: Preventing Needs for Care and Support

This clause sets out in statute a local authority's role in providing services which aim to prevent, reduce or delay needs for care and support 2(1)(b). In fulfilling their duty local authorities must identify services and resources already in their area and

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identify adults and carers whose needs are not being met, 2(2). An adult is defined as 'a person aged 18 or over' 2(8). Regulations may permit a local authority to make a charge for 'providing or arranging the provision of services' 2(3).

### **What does this mean?**

This clause is designed to shift care and support services towards prevention rather than emergency intervention. For carers this should mean that they will be able to get support at an early stage not merely when they have reached crisis point. In this preventative role local authorities must identify services and carers in their area. Service providers already carrying out preventative work could be instrumental in supporting local authorities to meet this duty.

### 2.3. **Clause 3: Duty to Promote Integration of Care and Support Services**

Local authorities will be under a duty to provide services through the integration of health services and other care and support providers where it would:

- Improve the well-being of the adults or carers needing care and support
- Contribute towards the prevention or development of needs
- Improve the quality of care and support provision

### **What does this mean?**

By placing a duty on integration care and support provision should be less disjointed. It should make it easier for carers to receive the support that they need to continue to care. How and when integration is to be achieved has been left to individual local authorities to decide. Service providers will not be under a statutory duty to integrate with local authorities or other providers however by working closely with the local authority they can aid the provision of a better service to carers.

### 2.4. **Clause 4: Provision of Information and Advice**

Under a new duty local authorities must establish and maintain an information and advice service. The information and advice provided must relate to: types of care and support and access to them, independent financial advice and how to raise concerns over the safety or well-being of an individual. Following the scrutiny over the Draft Bill the information and advice must now enable adults to plan financially for care and determine how to meet care and support needs.

### **What does this mean?**

By making information and advice accessible and available individuals can plan for the future and be aware of support available. Service providers already providing information and advice will be critical in helping to meet this duty. Carers' organisations will be able to support the development of this service by building on existing strengths to ensure that local authority offer local and specific advice for carers and their families.

### 2.5. **Clause 5: Service Market**

Local authorities have a new duty to create a service market with a 'variety of high quality services' and 'sufficient information' to enable people to make informed decisions, 5(1). The local authority must be aware of 'current and likely future demand' 5(2) for services and ensure that services are sustainable 5(3). In ensuring

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service sustainability local authorities will have to concentrate on services which will meet people's needs including participation in work, education or training 5(2)(c).

### **What does this mean?**

The concept of sustainable services has been added to the clause following consultation. This means that services must be suitable and sufficient to meet needs in that area. This includes services which allow participation in work, employment and training, also added from the draft bill. Carers' services already providing support to help carers to remain in education or employment will be vital in supporting local authorities to meet this duty.

### 2.6. **Clauses 6-7: Co-operation between Local Authorities and Partners**

Clause 6 ensures co-operation between relevant partners and the local authority. There is a general duty to co-operate when carrying out functions towards carers and those they care for, 6(1)(b). Relevant partners include local authority care and support providers, housing officers, children's services and public health services, 6(2). This general duty is supported by clause 7, a specific duty for local authorities and partners, to co-ordinate services in the case of an individual's well-being.

### **What does this mean?**

Co-operation between partners and the local authority should improve the provision of services to carers and those that they care for. The Joint Committee's report on the Draft Bill clarified that co-operation between independent and voluntary sector services would be better achieved through commissioning and contractual arrangements. Service providers will need to work closely with local authorities and its partners to ensure that support provided to carers is co-ordinated.

## Section 3: Assessment of needs

### 3.1. **Clause 8: How to Meet Needs**

Under sections 18-20 a local authority can meet needs by providing a service directly, by arranging for another provider to provide a service, or by direct payments, 8(2). Examples of what could be provided to meet needs include accommodation, care and support at home or in the community, goods and facilities, information, advice and advocacy, 8(1).

### 3.2. **Clause 9: Assessment of an Adult's Needs**

A single right for adults to an assessment based on the appearance of needs for care and support regardless of financial resources or level of needs, 9(3). The assessment must look at whether there are needs for care and support and identify what those needs are, 9(1). This assessment must take into consideration the wishes of the adult and how the provision of care could achieve these day to day outcomes, 9(4)(b)&(c). The adult, their carer, and any other adult requested must be actively involved in the assessment, 9(5).

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Since the draft bill 9(4)(d) has been inserted into the Care Bill which outlines that an assessment should include consideration of whether the adult's needs could also be met by 'friends, family or carers'.

### **What does this mean?**

It is important to note the potential implications of 9(4)(d) on carers. Local authorities will consider whether there are friends or family members who could aid and alleviate the needs of the adult needing care and support. The intention of the new part of clause 9 is for local authorities to assess what capabilities and existing resources a person may have or be able to access. By helping individuals to identify 'assets' the hope is that they will access support regardless of whether they meet the eligibility criteria and financial limit and if they may have to self-fund their own care and support.

However, the wording needs careful consideration so that local authorities do not unduly rely on family and friends to provide care and support, potentially taking on a greater caring role, and subsidising provision of support by the local authority.

### **3.3. Clause 10: Assessment of a Carer's Needs**

A new single duty to provide carers with an assessment regardless of the carer's level of needs for support, their financial resources, or those of the adult that they care for, 10 (4). A financial assessment would take place following an assessment of needs. This clause aims to give carers the same rights as those that they care for; the assessment must now consider how the provision of support would enable a carer to achieve their day to day outcomes. A local authority will be under a duty to carry out an assessment where a carer has or 'may' have needs for support therefore removing the requirement of 'substantial' and 'regular' care currently needed to qualify for an assessment, 10(1).

- 3.4. A 'carer' is defined as an 'adult who provides or intends to provide care for another adult' that is unpaid and not provided on a voluntary basis (apart from exceptional circumstances), 10(3)&(8). The assessment must consider whether the carer is willing, and able, to continue to care. The assessment must have regard to whether the carer is working, training or in education or wishes to do so. The care provided can be practical or emotional support. The assessment must also consider what resources or assets the carer can access from family, friends or other, 10(5)(f).

### **What does this mean?**

This clause has been amended from the Draft Bill so that carers have exactly the same rights to an assessment as an adult with care needs. The assessment must take into consideration a variety of factors which would ensure that carers are entitled to participate fully in and enjoy a life alongside their caring responsibilities. However, the definition of a carer as 'an adult providing care for another adult' excludes parent carers and carers of children. A carer's assessment will also be subject to the asset based approach seen in Clause 9.

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### 3.5. **Clause 11: Refusal of Assessment**

Individuals who qualify for an assessment under clauses 9 or 10 can refuse the assessment and the local authority is not required to carry it out. However, an assessment should still be carried out if the individual lacks the capacity to refuse or are at risk of neglect or abuse, 11(2). An adult needing care or a carer having previously refused an assessment can later request an assessment and the local authority is under a duty to assess them accordingly (11(5) for carers). If at a later date the authority believes that needs have changed then an assessment should be offered again 11(7).

### 3.6. **Clause 12: Further provisions to Clauses 9 & 10; includes whole family assessment and rights to written records of assessments**

The Bill states that regulations are to further clarify how a needs or carer's assessment are to be carried out. These regulations will specify that a local authority must have regard to the 'needs of the family of the adult' 12 (1)(a). Family could mean anyone, for example children or siblings.

The local authority must provide a written record of an adult's needs assessment to the adult, any carer and any other person that the individual wishes to be involved 12(3). The local authority must provide a written record of a carer's assessment to the carer, the adult needing care and any other requested person, 12(4). A local authority can provide a joint assessment for carers and the adult that they care for if it is agreed by all, 12(5).

#### **What does this mean?**

Regulations are secondary legislation which gives effect to the Bill; these regulations have not yet been drafted but the Bill provides for some key aspects which must be considered in the assessment. Crucially it gives the right to a whole family assessment which should have considerable implications for young carers and for families where there may be mutual carers. Regulations should specify how assessments will be carried out and how a whole family assessments will relate to the other duties in the Bill i.e. duties to meet needs.

## Section 4: Eligibility

### 4.1. **Clause 13: Eligibility**

Following an adult or carers' needs assessment the local authority will apply the eligibility criteria to assess those needs, 13(1). The eligibility criteria has not yet been written but will be set out in regulations separate to the Bill, 13(7). The criteria will set out that where at least some needs meet the criteria the local authority must consider what could be done. If none of the needs meet the criteria the local authority must still provide a written record containing advice and information on what could be done to reduce, prevent and meet needs, 13(5). The regulations will describe needs according to the effect the needs have on the adult concerned and their circumstances, 13(8).

### **What does it mean?**

The regulations outlining which needs are eligible are expected following the spending review in June 2013. These regulations will be crucial in determining which needs and therefore which carers can receive support from the local authority. It is important to note that there will now be a national standard for eligibility which should prevent disparity between local authorities.

Local authorities will still have to provide information and advice to those without eligible needs. Previously local authorities would not have been under a duty to provide advice to those not entitled to it. Services, like local carers' organisations could play a vital role in aiding those without eligible needs but still requiring some level of support, information and advice.

#### **4.2. Clause 14: Power to Impose Charges**

Local authorities may impose charges for meeting needs or for putting into place arrangements to meet needs under sections 18-20, 14(1). Local authorities may impose charges but are not under a duty to do so. Regulations will provide for the exercise of the power to make charges but also from where they will be prohibited from making a charge, 14(5) for example where services are for preventing needs for care and support.

Clause 14(3) has clarified that carers will not be responsible for the cost of care and support provision to the adult they care for as a means of meeting their need for support. Following this provision carers should not have to pay for services to be provided to others as a means of meeting their needs.

### **What does this mean?**

Whilst the Bill has been amended to show that carers will not be responsible for meeting the costs of an adult's care and support needs, they may still be charged for support or services to meet their own needs. The duties in the Bill for preventing care and support needs are potentially undermined by charging carers for support. Supporting carers is in itself preventative, helping to maintain the caring role and the health and wellbeing of both the cared for person and the care. Carers Trust believes that it is counterproductive to charge carers for support and that charging may act as a barrier for carers accessing support that helps them continue in their caring role.

#### **4.3. Clauses 15-16: Cap on Costs**

The cap will prevent local authorities from charging once a cap on costs has been reached, 15(1). It is important to note that progress towards the cap will not include daily living costs, 15(6). The Secretary of State will have the power to set and amend a cap on costs which will be set at different levels for different age groups, 15(4). The cap and an individual's accrued costs will be amended in line with inflation on an annual basis, clause 16.

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### What does it mean?

How charges for carers' services will be included in calculations of care costs and contributions towards the cap on care costs needs further clarification. See clause 29 on Care Accounts (paragraph 7.3).

#### 4.4. **Clause 17: Financial Assessment**

When a local authority is charging for the provision of a service they must carry out a financial assessment to determine the level of an individual's financial resources and how much the individual could contribute, 17(1). This will apply to both carers and the adults needing care. Regulations will set out how the local authority will calculate whether, and how much, an individual must contribute and what counts as income or capital for the financial limit. The adult or carer must be provided with a written record of their assessment, 17(6).

### What does this mean?

Carers can be charged for the provision of their own support if they are assessed as having financial resources above the set financial limit. This concept undermines the idea that identifying and supporting carers is a preventative measure in reducing needs for care and support.

## Section 5: Entitlement to support and meeting needs

#### 5.1. **Clauses 18- 9: Duty & Power to Meet an Adult's Need for Support**

Having determined that an adult has eligible needs for support the local authority must meet these needs providing that:

- The adult is ordinarily resident or present in that authority's area
- The accrued costs do not exceed the cap
- There is either no charge or the charge is at or below the financial limit

It is important to note that if the adult's financial resources are above the financial limit then there is no duty for the local authority to meet these needs unless the adult requests that they do so and then pays for any charges, 18(3).

It is important to note that this clause has been amended. As such the local authority is under no duty to meet the needs for care and support if a carer is already meeting those needs, 18(7). The assessment must look at all the needs of an adult but the duty to meet the needs does not extend to those being met by carers.

### **What does this mean?**

The intention of clause 18 (7) corresponds with the asset based approach in clauses 9 and 10 which assesses what capabilities and existing resources a person may have or be able to access. Clause 18 (7) extends the asset based approach meaning that local authorities will not have to meet the needs of an adult if there is a carer already meeting those needs. There is concern that local authorities could unduly rely on carers to provide care and support, potentially taking on a greater caring role, and subsidising provision of support by the local authority.

### 5.2. **Clause 20: Duty and Power to Meet a Carer's Need for Support**

This provides a new legal entitlement for carers to public support. A local authority, having completed an assessment for a carer who is ordinarily resident or present in its area and whose needs meet the eligibility criteria, has a duty to meet the carer's need for support.

This duty can be met through:

- Provision of support to the carer provided:
  - There is no charge
  - The carer's financial resources are at or below the financial limit
  - Those with resources above the financial limit and with eligible needs request that the authority meet their needs and pay for charges incurred
  
- 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 to meet the carer's needs through provision of care to themselves
  - If the adult needing care is at or below the financial limit and the adult needing care agrees to meet the carer's needs through provision of care to themselves
  - If an adult needing care is above the financial limit, they must request that the local authority meet the needs of the carer through provision of care to themselves and if this incurs a charge they will pay for it
  - If it's impossible to support the carer through provision of services to the adult requiring care then the authority has to find an alternative means (clause 20(8))

Furthermore, if a carer's needs do not meet the eligibility threshold, then the local authority can still meet their needs through the provision of support to the adult needing care with the adult's agreement, 20(6). A local authority may also provide services to an adult needing care regardless of whether they are under a duty to that adult in order to meet the carer's needs, 20 (7). A local authority can impose a charge for providing these services (clause 14).

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### **What does this mean?**

This duty will strengthen carers' rights but if they or the person they care for have financial resources over the limit they will still have to request that the local authority meets their needs and they will have to pay for any costs. The impact assessment of the Bill found that the new duties would result in an increase in the numbers of carers being assessed and becoming eligible for support. The Government's analysis shows that whilst this would lead to an increase in demand for resources, and a need to commission further carer's support, it would be cost effective to meet carers' needs as a preventative measure.

### 5.3. **Clause 21 & 22- Exceptions to Duty to Meet Needs**

There is no duty to meet the needs of an asylum seeker arising from them being destitute, nor is there is a duty to provide services to an asylum seeker as a means of meeting a carer's need for support, clause 21.

There is no duty on a local authority to provide a service if that service or facility should be provided for by the NHS, clause 22.

## Section 6: What happens after assessment

### 6.1. **Clauses 24, 25 & 29: Care and Support Plan and Procedure for Local Authorities**

When a local authority is under a duty to meet needs under clause 18 or clause 20 then they must prepare either a 'care and support plan' for adults needing care or a 'support plan' for carers (clause 24). In preparing this plan the local authority must help the adult decide how the needs should be met and which (if any) would be met by direct payment.

The plans must specify: the needs identified, which meet the eligibility criteria, which are going to be met, budget advice and information on reducing and preventing needs (clause 25). These plans must be kept under review and must involve the adult to whom the plan relates; any carers and any person the adult asks the authority to involve (clause 29).

### **What does this mean?**

Clauses 24-35 set out in law for the first time what the processes for care and support planning and its implementation are. This will aid transparency of service provision and is designed to improve the person centred planning process. As such carers are entitled to their own support plan. These plans are designed to help reduce, prevent and delay needs.

### 6.2. **Clauses 36-37: Continuity of Care When Moving**

These provisions are designed to improve continuity of care for those moving from local authority to another local authority. It places a duty on the new local authority to provide care and support from the day that the adult moves to their area. The new authority is entitled to make an assessment of needs but where they have not done

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so prior to the move, then they must match the first authority's care and support provisions.

Clause 37 which provides for assessments not completed prior to the move states that the second local authority must consider the needs for support of any carer. Clause 36 applies to adults with care needs who move, although carers who continue to care for an adult, who has moved, should remain involved in the care and support planning. The second authority should also receive information about any carer the adult has.

### **What does this mean?**

The Bill needs clarification on what will happen if an individual moves and they will not receive the same level of support from a carer; and if the cost of meeting a carer's eligible needs is different in the second authority then the carer and the adult needing care (and any other person the carer wants) should be informed.

## Section 7: Personal Budgets and direct payments

### 7.1. **Clause 17: Financial Assessment**

When a local authority is charging for the provision of a service they must carry out a financial assessment to determine the level of an individual's financial resources and how much the individual could contribute, 17(1). This will apply to both carers and the adults needing care. Regulations will set out how the local authority will calculate whether, and how much, an individual must contribute and what counts as income or capital for the financial limit. The adult or carer must be provided with a written record of their assessment, 17(6).

### 7.2. **Clauses 26-28: Personal Budgets & Independent Personal Budgets**

A local authority may provide a statement known as a personal budget which breaks down the cost of the adult's care when needs are met (clause 26). The breakdown of costs must show what the local authority has paid and what is owed by the individual. As daily living costs do not contribute towards the cap, they are to be clearly separated.

An Independent Personal Budget differs from a personal budget as the local authority is not meeting the needs of an individual with eligible needs. This budget records how much the local authority would have to spend on care and support (not including daily living costs). These budget records have been separated to ensure that those who choose to spend more on their care are not reaching the cap on costs quicker than they would have done if the local authority had been meeting their care and support needs.

### 7.3. **Clause 29: Care Account**

A care account will be kept up-to-date by the local authority to record an adult's accrued costs of care. The purpose of this account will be to measure and record an adult's progress towards the cap of costs (paragraph 4.3) and it will be adjusted according to inflation annually. Adults will receive regular statements and must be notified when they reach the cap, 29(1).

### **What does this mean?**

It is unclear whether a care account for an adult with care and support needs, includes carers, but considering that the Bill distinguishes carers from 'an adult with care and support needs', it appears that it does not include carers. It is uncertain whether the costs of meeting a carer's needs will be added to an adult's care account or whether a carer will have their own care account. The provisions for calculating care costs and contributions towards the cap on care costs need further clarification.

#### **7.4. Clause 31: Direct Payments**

A direct payment is a payment by the local authority to an adult enabling them to arrange their own care and support. Where an adult has capacity to make the request it can either be paid directly to them or to a nominated person (this could be a family member or carer). Where a person does not have capacity, an authorised person under the Mental Capacity Act 2005, may receive the payment, clause 32.

#### **7.5. Clauses 34-35: Deferred Payments**

The Bill will provide for authorities and individuals to enter into a deferred payment plan for chargeable services. Deferred payment plans will help people to avoid having to sell their homes in their lifetime to pay for residential care. Regulations will define when these agreements can be entered into, what interest could be charged and what conditions must be met.

### **What does this mean?**

This Bill sets out personal budgets in law for the first time. The local authority will record the spending on meeting needs to prevent individuals from exceeding their cap on costs. Direct payments and deferred payments will allow individuals choice and control over how their needs are met and therefore how their care costs accumulate. Service providers may need to make services available to allow carers to find out what options are available to meet their needs.

Carers Trust will be examining these provisions further with the development of regulations for personal budgets and direct payments. It will be important that there is clear guidance on how personal budgets and direct budgets for carers are calculated and what they can be spent on.

## Section 8: Safeguarding adults at risk of abuse or neglect

#### **8.1. Clauses 41-46: Adult Safeguarding**

The Bill introduces a new adult safeguarding framework. Under Clause 41 local authorities must make enquiries where they 'reasonably suspect' that an adult in their area, in need of care and support and incapable of protecting themselves, is at risk of abuse and neglect. Abuse includes but is not limited to financial abuse (41(3)).

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Local authorities will be under a duty to establish 'Safeguarding Adults Boards' in their areas (SABs), clause 42. Their objective is to protect and help individuals at risk. They must coordinate members and activities for safeguarding purposes and report on progress annually. SABs must include the local authority that established it, a representative for the Clinical Commissioning Group (CCG) and the police.

SABs must carry out a review into cases where the SAB 'knows or suspects' that an adult has experienced, or has died from, serious abuse or neglect, clause 43. This includes past cases of abuse and neglect. The aim of the review is to ensure lessons are learnt and are applied in the future. A SAB has the power to obtain information where it assists or enables the SAB to carry out its functions, clause 44.

The Care Bill will also abolish the local authority's power to remove persons in need of care, clause 45. This power originated from the National Assistance Act 1948 but following the Care Bill this power will no longer apply in England.

### **What this means?**

Local authorities will have the power to determine the composition of SABs. The Bill does not include potentially key partners such as mental health trusts and prison services. The SABs are established to find the mistakes and learn from them but it is not clear how their lessons and guidance will be shared. It is also notable that there will be no allocation of blame for past errors.

## Section 9: Transitions, young carers and parent carers

### 9.1. **Clause 17: Financial Assessment**

When a local authority is charging for the provision of a service they must carry out a financial assessment to determine the level of an individual's financial resources and how much the individual could contribute, 17(1). This will apply to both carers and the adults needing care. Regulations will set out how the local authority will calculate whether, and how much, an individual must contribute and what counts as income or capital for the financial limit. The adult or carer must be provided with a written record of their assessment, 17(6).

### 9.2. **Clauses 55-56: Disabled Children**

Local authorities will have a power to assess a child's needs for care and support where they receive a request from a child or parent of a child, when it appears that the child is likely to have needs after becoming 18. The assessment must consider what outcomes the child wishes to achieve in day to day life, and whether, and to what extent provision of care and services could help achieve those outcomes.

### 9.3. **Clauses 57-59: Child's Carer i.e. parent**

When requested, a local authority must assess a child carer's needs when a carer is likely to have needs after the child they are caring for becomes 18. A child carer is defined as any adult, not necessarily the parent providing care to a child, clause 57. Clause 58 stipulates that the assessment must consider: whether the child's carer is

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willing and able to continue caring upon the child reaching 18, what the carer wants to achieve in day-to-day life and what support could help to achieve those goals. A local authority has the power to meet a child carer's needs for support, clause 59.

### 9.4. **Clauses 60-61: Young Carers- 'a person under 18 who provides or intends to provide care for an adult'**

It is important to note that this provision only relates to young carers at transition from child to adult social care only when the authority is satisfied that an assessment would be 'of significant benefit'. When requested by a young carer or parent of a young carer, local authorities will have the power to assess whether a young carer has or will have needs for support upon becoming 18 years old. A young carer's assessment must look at whether the child is able to care, willing to continue to care, what outcomes the young carer wishes to achieve in day to day life and whether provision of support could help achieve those aims.

### 9.5. **Clause 62: Further Provisions to Clauses 55-61**

The local authority can combine the assessments from clauses 55-61 with one another so long as the child and adult agree, if the child does not have the capacity to agree then the assessment can still be carried out jointly if it is deemed to be in the best interests of child and the adult/carers agrees to it.

#### **What does this mean?**

It is important to note that child carers will still need to request an assessment (when their child is at transition) and that there is no separate provision for parent carers' rights to assessment and support when their child is under the age of 18 years.

The definition of 'young carers' in law may detract from the need to focus on children caring for adults as children first, who need to be protected from inappropriate caring and not helped to maintain significant caring responsibilities. Young carers who care for their siblings under the age of 18 years old would not be eligible for an assessment under the current definition.

These clauses have also been amended from the Draft Bill and include the asset based approach seen in clauses 9 and 18. Assessments for disabled children, child carers and young carers would also look at what support and circumstances were already available from friends, family or other to meet their needs. This asset based approach could place an undue expectation on carers to continue caring and could allow the local authority to not undertake their duty to meet needs if someone else is already doing so. This is particularly inappropriate for children and young people who may have caring responsibilities and who should be protected so that they can have the same opportunities as other children.

### Section 10: Other provisions and next steps

#### 10.1. Other provisions from Part 1 include

- Clauses 47-49 provide for a new approach for local authorities in dealing with service providers who cease to exist in order to ensure a continuity of care
- Clauses 64-65 include powers from local authorities to recover their debts including where someone has transferred assets to avoid paying
- Clause 71 is a new power for local authorities to delegate their duties of assessment and care planning to other organisations. This does not remove their legal obligations or responsibilities

#### 10.2. Part 2

Part 2 of the Care Bill is the Government's response to the Francis Report and will introduce performance reviews, a 'failure regime' for swiftly addressing poor standards, greater transparency and accountability and sanctions for care providers who report false or misleading information. Part 2 was not part of the Draft Bill so it did not undergo pre legislative scrutiny.

#### 10.3. Part 3

The Bill will establish the Health Education England (HEE) & the Health Research Authority (HRA). These bodies will give local healthcare providers the responsibility for education and training, planning and commissioning whilst protecting and promoting the interests of patients.

#### 10.4. Next Steps

The Care Bill has been introduced in the House of Lords and is at Committee Stage. To see how the Bill is progressing in Parliament, you can visit the Care Bill page here: <http://services.parliament.uk/bills/2013-14/care.html>

The Bill will be discussed in reverse order in the Committee, dealing with Part 1 last so that regulations concerning eligibility are published when duties on assessment and meeting needs are debated. This is important so that the Bill is examined in Parliament when it is clear who the new duties will apply to.

Carers Trust will be working with Government and Parliamentarians to seek helpful changes to the Bill for carers. Carers Trust briefings will be available on [www.carers.org](http://www.carers.org)

#### 10.5. For further information or advice, please contact:

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#### 10.6. Legal information

Carers Trust has taken every effort to ensure the accuracy of this document, but cannot be responsible for errors or omissions. This briefing is an analysis of the clauses of the Care Bill which are subject to change during the Parliamentary process. It is not an authoritative statement of the law.