



**Foundations**  
THE NATIONAL BODY FOR  
HOME IMPROVEMENT AGENCIES

# The Care Act 2014 and its Statutory Guidance

Briefing for the housing support sector



January 2015

# 1. Introduction

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This briefing is intended not as a summary of the Care Act and its attendant statutory guidance. Rather, it seeks to set out the implications of the Act and guidance for commissioners and providers of Home Improvement Agency Services in England.

Care and Repair England has prepared an excellent summary of the main references to housing in the Care Act and the statutory guidance which may be accessed [here](#).

## What is the Care Act?

The Care Act is the most important legislative change affecting the HIA sector in over a generation. It brings together 60 years of health and social care legislation into a single statute and in the process repeals or substantially amends over 30 Acts of Parliament going back to the National Assistance Act of 1948. It will fundamentally affect the relationship of the person to the state where it concerns the provision of care and support. As one of the principles of HIA provision is the delivery of 'person-centred' housing related support, if the relationship between the person and the state changes it also changes the role and position of HIA services.

The Care Act 2014 received Royal Assent on 14 May 2014 with its attendant [statutory guidance](#) being issued on 23 October 2014. It will come into force on 15 April 2015. The fundamental change it represents is that duties are defined in terms of responses to need rather than delivering specified services when people meet certain eligibility criteria. As there are 506 pages of statutory guidance underpinning the Act, this does not mean that local authorities have complete freedom as to how they respond to that need. Rather the act looks forward to improve the outcomes and experience of care, secure more effective use of public and community resources by providing a range of choices and put more control into the hands of those looking for solutions to their care and support needs.

## What does the Care Act and its statutory guidance say about Housing and Adaptations?

The Care Act is an explicit attempt to simplify and clarify current care and support legislation, to keep pace with rising aspirations of people, providers and government around care and support provision and respond to rising demand for such services as the number of people likely to require care rises dramatically in the coming two decades. While consideration of home and housing were not absent in previous care and support legislation, the Care Act 2014 embeds the concept of suitable living accommodation within the guiding principle of the entire care and support system envisaged by the act. In addition to accommodation being part of the legal definition for **wellbeing**, '*independent living*' is confirmed as a '*core part of the wellbeing principle*' (para 1.18).

The statutory guidance to the act mentions housing 215 times, adaptations 25 times, home improvement agencies twice and handy person services 3 times. Furthermore, while housing related support services are integral to the Act and guidance as a whole, chapter 15 entitled **Integration, co-operation and partnerships** reinforces the requirement for local authorities to consider housing related outcomes alongside health and social care outcomes. The question for commissioners and providers of housing and HIA Services is not whether they

are part of the Care Act but what and how one may ensure that an integrated housing offer delivers.

The Care Act and its implementation particularly affect Adult Social Care and Health service commissioners as they work through the implications of the detail affecting assessment, charging, statutory duties to provide health and personal care. Housing services clearly have a role in the wider transformation of the health and social care system. However, the statutory guidance particularly looks to housing related services to help in preventing or delaying demand for larger packages of care and support and help in integrating the whole system.

## 2. Prevention

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The government hopes to avoid, reduce or delay a significant proportion of care needs arising by early intervention rather than crisis management.

Section 2 of the Act and Chapter 2 of the statutory guidance set out how local authorities are expected to deliver on the **duty to prevent** and includes the duty to *'develop a clear, local approach to prevention which sets out how they plan to fulfil this responsibility, taking into account the different types and focus of preventative support'* (para 2.23). This duty must consider current and future supply and demand of wide range of services beyond the narrow definition of the health and care system and requires the promotion of diversity and quality in provision.

Local housing related support services should therefore identify the people responsible for developing the preventative approach across their local health and social care economy and ensure that their own services are recognised both in terms of current supply and their ability to meet future needs. The local Joint Strategic Needs Assessment continues to be key to understanding the priorities and future needs for your local health and care system and should underpin the positioning of local HIAs.

The Guidance to the Act describes preventative services in relation to people benefiting from **primary, secondary** and **tertiary** prevention which relate to the extent to which preventative services are targeted. Primary prevention relates to the provision of a universal service and tertiary prevention targets those in greatest need. *Housing related support services* are seen to have a role in the delivery of all three with specific mentions of befriending in primary prevention, *handy person services* in their role to reduce care needs as a descriptor for secondary prevention and *equipment and adaptations* noted for their ability to delay greater need arising as a tertiary preventative service.

The guidance is very clear about maintaining certain statutory duties such as *the provision of equipment and minor adaptations free of charge to those assessed with a need* (2.59). The guidance is less clear as to the circumstances in which local authorities **must** or **should** provide or arrange to provide the range of services described. The use of these words is deliberate, and reflects their legal status. Where 'must' is used, this is because the point ties directly to a legal duty – either in the Act itself or in regulations. Where 'should' is used, this is intended to **set a clear expectation**, but not to create a legal requirement. The status of the guidance is set out in the introduction, which states that *'local authorities must follow it, unless they can demonstrate **legally sound reasons** for not doing so'*.

So Foundations expects that while *'consideration of housing issues in relation to a local authority's **reasonability** is an integral part of the health and care system and a local authority's responsibility for care and support.'* (Para 15.54) the test of what is reasonable will be subject to local challenge which will over time establish legal precedent. Local interpretation, local priorities and provider confidence are therefore likely to determine what and how the duty to prevent will be planned for and delivered in different places until a sufficient body of precedent has been established to clarify the letter and spirit of the Act and its guidance.

It is therefore vital that you safeguard the provision of home improvement agency and other housing related support services by ensuring these are part of the local Better Care Fund plan, of which more below and that the Better Care Fund plans are successful in shifting sufficient resource from crisis management to prevention without harm to vulnerable people in acute need.

The statutory guidance to the Care Act 2014 is very iterative. It repeats itself as it set out the overlapping duties to prevent, advise and inform, assess and integrate. Consequently, separate chapters on each of these duties reiterate the need to cooperate and co-produce, to measure and prove outcomes and to take a person-centred whole system approach to the provision of a range of options for people. So in the provision of *preventative services* where the sector has a record of delivering the kind of services described in the guidance such as **handy person services, adaptations and housing options advice and information**, the sector will be challenged to reposition existing services in the light of local priorities, joint delivery with new partners in order to target these services at pinch-points in the system and new ways of delivering well established processes in line with the requirements of health and social care partners and the aspirations of customers given greater control under the Care Act.

### 3. Advice and information

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Similar arguments underpin the requirement under the Care Act for local authorities to establish and maintain advice and information services **for everybody** in relation to not just the local care and support system but a much wider range of concerns including health, housing, finance and employment (para 3.24) reinforces the point that it must include housing and housing related support options. Government sees the availability of information and its quality is a critical enabler for both consumers and commissioners to make choices and drive up quality. Better access to information is to play an important role in enabling greater collaboration at local level. Together, increased access to quality information and joined up working across local public services is to support better planning and prevention and enable more personalised approaches to care.

In the same way that the guidance requires every local authority to develop a strategy for prevention, Chapter 3 of the guidance (para 3.55) sets out the requirement for local authorities to develop an **information and advice plan**. The guidance reiterates the requirement to cooperate and integrate across the local health, housing and care economy and identifies local Health and Wellbeing Boards and Joint Strategic Needs Assessments as the likely basis for the information and advice plan or strategy. It also provides a clear steer to best practice resources available [here](#).

For local commissioners and providers of home improvement agencies the clear implication is to align their own plans to commission and deliver housing related advice and information to the priorities expressed in JSNA and local Health and Wellbeing Strategy. This includes designing targeted services able to provide the right information and advice in times of crisis and proactive engagement with people at certain 'trigger points' (listed at 3.26).

Private sector housing services and HIAs have traditionally provided advice, information and some support for people to act upon that advice and information in relation to a range of housing options. However the breadth of advice and information envisaged in the guidance is likely to be beyond the experience of the sector. So while the HIA sector is well placed to deliver a part of the information and advice requirements under the Act, no single service is likely to meet all information and advice needs within any one top-tier authority and local agencies may expect to be much more closely integrated into a larger mixed economy of local and national advice services.

Furthermore as local authorities should ensure that local advice and information is clear, accurate, up to date and consistent with other sources, the act and its attendant guidance is likely to require providers of information and advice to underpin their service offer with accountable information standards. The guidance (para 3.18) suggests '*local commissioners take account of the information standards published by the Information Standards Boards for health and social care established under the Health and Social Care Act 2012.*'

Significant parts of the chapter on advice and information relate to the provision of advocacy services and access to regulated advice activities in relation to financial advice. Access to impartial advocacy is crucial to the growing number of people for whom mental capacity will be an issue with the onset of cognitive impairment brought on by forms of dementia. On the other hand, access to independent financial advice will be crucial in order to enable people to make the important choices around their and their family's financial future as personal care and support needs increase.



If HIAs consider the provision of independent advocacy an opportunity under the Care Act, they will need to ensure that they are not otherwise conflicted in the choice of outcome by the direct provision of chargeable ancillary services such as handy person or major adaptation design services. With the closure of the umbrella body Action4Advocacy, Martin Coyle the CE of A4A has set up True Voice <http://www.truevoicetrust.org/4.html> in order to support organisations wishing to commission or deliver advocacy services.

It is more likely that HIA services will want and need to facilitate the delivery of unregulated and regulated advice where this enables people to explore options to release equity not just to pay for care and support but for the repairs and adaptations that will delay or avoid the need for larger care packages at home or within residential care. Foundations is working with Step Change the erstwhile Consumer Credit Counselling Service to equip local services with the skills, training and access to support and the right services and products to enable their customers to explore equity release options. If you are interested in this joint work please contact Douglas Stem Foundations Development Manager. It is also likely that there will be local authorities who may see the requirement to provide a deferred payment scheme as an opportunity to extend this to the financing and provision of major adaptations to enable people to stay at home rather than enter residential care. Foundations should very much like to work with local commissioners who want to explore extending deferred payments in this way.

## 4. Integration

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The Act and its guidance are explicit in the placing of a general requirement on local authorities and relevant partners to cooperate in relation to care and support functions, and clarifies local authority duties to cooperate with local service providers (Section 3 of the Act). It creates an ability for the local authority or relevant partner to request cooperation in relation to an individual case and places a duty on the local authority to promote integration of care and support services with health and other related services, including housing.

Chapter 15 of the guidance sets out the duties of local authorities to cooperate and includes two sections on the expectation that the health and care system will work with housing authorities and providers (paras 15.48-59) and reiterates the role housing is expected to play in supporting prevention of needs (paras 15.60-68).

Section 3 of the Act is clear in that the duty to cooperate and promote integration appends to all statutory authorities across the social care, health, housing and criminal justice systems. Where local authorities are successfully able to integrate provision, the implications for commissioners and providers are likely to be transformative and far reaching in terms of:

- **Staff and working hours**, as seven day working will be expected where housing services commit to supporting the priorities of acute medical services, for example facilitating discharge from hospital.
- **Service and professional boundaries**, as assessments and care packages are co-designed with customers across the local health, housing and social care economy.
- **Commissioning, reporting and contracting**, as addressing need and achieving outcomes replace defined inputs and activities.
- **Relationships between providers**, as decisions will be made over who is best placed to deliver any one aspect of assessment, advice, preventative measures, care and support or community intervention and as providers are challenged to come up with integrated models of delivery across previously distinct and specialised activities for example the provision of equipment, minor adaptations and larger adaptations.
- **Relationships with customers**, as the need to co-produce, sell and respond to aspiration and needs replaces prescription.
- **Skills, training and staff competencies**, as generic commissioning and delivery across service boundaries challenges the hitherto narrower skills set of delivering housing related support services in distinct tenures and areas of expertise.
- **Standard setting**, as easily understood 'kite marks' will be required to provide confidence and assurances to organisational and individual customers purchasing care, support and housing services from a mixed economy of providers.

The implications for commissioners and providers of HIA services are profound:

1. There will be pressure to deliver out of hours to the priorities of the health and social care services.
2. There will be pressure to concentrate the professional expertise of OTs, social workers and technical officers on those with greatest and complex need while more generically qualified assessors and advisers and support the personal choices of people making decision about their current and future support needs.
3. Housing interventions will be assessed in the light of the impact they make to the service users' ability to self-manage long-term health conditions and cost-benefits have to be evidenced.



4. Previously competing or very distinct providers will need to get together as activities merge into larger more integrated contracts.
5. Providers will be required a strong customer service ethos in order to successfully respond to their aspirations and sell services and products to individuals and their families.
6. Caseworkers, technical officers and handy persons will be asked to take on assessments that require different and often formal competencies. They are likely to provide advice and information across a broader range of options, tenures and issues such as dementia friendly design.
7. Lastly, commissioners and providers of services and goods will need quality assurances that are widely understood, provide personal warranties and shared across sectors.

These pressures are likely to manifest themselves in different combinations and variable force in different places and circumstances. This briefing sets out the parameters of the opportunities and challenges facing the HIA sector and its commissioners.

Government, national resources and networks such Care and Repair England, First Stop, Housing LIN, the King's Fund and other professional bodies will all be working together to provide the evidence, best practice examples, support and tools to formulate responses to these pressures. This briefing is only the first step.

## 5. Assessments and eligibility criteria

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The Care Act and its guidance will increase demand for assessments and consequently the advice and information that follows on from any such assessment. The biggest rise in demand is likely to be as a result of the ‘parity of esteem’ for carers introduced by the Act. Essentially this puts carers on the same legal footing as the people they care for. If the new obligations to consider unmet future needs are not to give rise to greater numbers of assessments, the requirement to treat carers the same as those they care for is certain to. To support local authorities in handling higher volumes of assessments for carers, the Department of Health is providing an extra £22m per annum from 2015/16, rising to £27.5m from 2017/18 onwards.

An important policy objective of the Act is to create a more nationally consistent system of eligibility for users and carers which is understandable, transparent and outcome-focused, supports personalisation and prevention while continuing to allow local authorities flexibility to reflect individual, family and local circumstance. As a consequence, the Care Act revokes the regulations on Fair Access to Care and replaces them with 10 eligibility regulations measuring outcomes (para 6.107). Four of these outcomes are or may be housing related:

- b) Maintaining personal hygiene
- c) Managing toilet needs
- e) Maintaining a habitable home environment
- f) Being able to make use of the home safely

There is clearly an opportunity for the HIA sector to provide capacity to local authorities and primary health care services to assess an important determinant of health inequality, people’s home environment. While the guidance is very positive about the role that housing can play in delaying, defraying and diverting demand for higher cost interventions elsewhere in the care and support system it is largely silent on how the needs of the majority in the private sector may be assessed. This is very much a traditional role for the HIA sector. The Department of Health is still working on finding efficient solutions to providing assessments, including tools that support proportionate assessments and efficiencies around first contact, as well as working with local authorities to refine practice around self-assessment. The department has also worked with Skills for Care to develop training materials for managers and practitioners. These may be found [here](#).

People will qualify for formal care and support plan if they or their carer fails to achieve 2 or more of the 10 outcomes listed in 6.107. The regulation has been very carefully modelled so as not to exclude anyone eligible under the old FACs criteria. It should also be noted that even where people or their carers are not eligible for care and support planning, information and advice must be still be provided following an assessment that addresses unmet and future needs (paras 6.139-140).

## 6. How can the housing support sector engage with the implementation of the Care Act?

The publication of the statutory guidance in late October was accompanied by a number of promises by the Department of Health about the support for local authorities and providers in the implementation of the Care Act 2014. This briefing has already indicated a number of them and provides pointers to people responsible for the prevention, advice and information and market shaping agenda. These are likely to sit not on the Health and Wellbeing board which will have ultimate responsibility of successfully implementing the act but in the committees feeding plans and solutions to the Health and Wellbeing Board. Your local Foundations development manager will be able to help you start to map local implementation structures.

### Toolkits and prevention library

The Department of Health is due to publish a 'Practice Guidance' which will consist of best practice guidance, toolkits and other products which help support implementation. These do not have any legal status, so may be used by LAs, or not. They will vary from one area to another and Foundations is keen to co-produce some with and for the HIA sector. If you have good traction in the implementation of the Act either as a commissioner or a provider in your area we are keen to hear from you.

As the briefing makes clear, evidencing benefit and prevention will be crucial in getting services commissioned. The Department of Health is committed to developing a "Prevention Library" to open in early 2015. This will be populated with evidence, evaluated practice examples and good practice intended to supplement the statutory guidance. Foundations is committed to working with DoH to ensure the HIA sector is represented in that library but this will again very much rely on you sharing what work on the ground. If you have robust evidence of effective preventative services delivery, please contact your regional Development Manager.

Lastly, the DoH is doing national work on generic texts, information, tools and web-based resources to support the implementation of local advice and information plans. These will be available to Local Authorities and providers free of charge. As are the toolkits for small providers that aim to help them engage with the market shaping planned under the Act. Foundations not only hope to inform these departmental activities but will also ensure the sector is kept informed.

### Local Better Care Fund and Health and Wellbeing Boards

It should be noted that the Care Act does not operate in a vacuum. It is the result of a well-established direction of travel towards person-centred, whole system solutions of which the HIA sector itself is also a product. Furthermore, as the driver for integration is the Better Care Fund locally, the success or otherwise of local home improvement services to feature in the medium and long term plans of commissioners will be dependent on the effectiveness and success of the BCF.

One of the weaknesses of the Care Act is that although housing has a high profile in the guidance, the Act is largely silent on how it may be represented in the governance of its implementation. This will again differ from place to place. Nevertheless, while the health and

care sectors have succeeded in finding jointly agreed messages and are working towards a shared language, housing and housing related support services still largely reflect diverse and at times divergent interests across tenures, authorities and provider market for local home improvement services which are often too small on their own to influence the larger commissioning structures. If there are local housing forums operating in your area or local Housing LIN regional meeting scheduled in your area, Foundations would recommend you attend and contribute so housing is over time able to formulate a more coherent service offer to the health and care system.

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