

The Care Act 2014—a new broom, but what's been swept away?



The Care Act 2014 (the Act) came into force from 6 April 2015, and has swept away the previous unwieldy regime, which had developed piecemeal since 1948, and had been the subject of regular and recent judicial scorn. How the new legislation interacts with personal injury awards is outlined in various parts of Statutory Instrument 2014 No. 2672. There were some errors in the Regulations which the Department of Health have corrected in Statutory Instrument 2015 No. 644. The intention of this article is to provide a brief overview. However, there is no substitute for a full reading of the above primary and secondary legislation.

State funding for care

The new Act completely replaces the old system, with the emphasis now squarely on the local authority to promote the individual's well-being. This wide-ranging term incorporates personal dignity, control (as far as possible) by the individual of his or her own life, physical and emotional well-being, and facilitating domestic, family and personal relationships in the setting of suitable accommodation. On that basis, the Act should strengthen access to what should be better quality care.

Gone is the post-code lottery, whereby different local authorities could adopt different eligibility criteria. Also, the local authority now has a duty to liaise with relevant Clinical Commissioning Groups when appropriate to coordinate care for the individual concerned. That new and positive duty is a significant contrast to the old regime, where there was often a dispute as to the levels of care each body should provide. So, once the Act has bedded in, an individual should be able to access an outcomes-based, person-centred care regime, arrived at by way of collaborative process. On top of that, the Act also caters for carers and their needs and rights. All that said, how all of the broader aims of the Act can be achieved against the background of funding cuts and an ageing population will be the subject of much ongoing scrutiny.

The Care Cap

The initial implementation of this flagship policy has been deferred from April 2016 until at least 2020. The effect of the care cap should be that any individual requiring social care will have their contribution towards the costs of such care and support services capped at a certain monetary amount, depending on age.

For people who develop eligible care needs in later life, the cap will be £72,000. In other words, they need pay only up to £72,000 overall towards the costs of meeting their needs for care. There are additional costs to which the cap will not apply, resulting in a greater de facto total expenditure. There will be a limit lower than £72,000 for people who develop eligible care needs before they reach 65 although, to my knowledge, this lower limit has not yet been disclosed. For individuals assessed as having an ongoing eligible need for adult social care support before their 18th birthday, the cap on care costs will be £0. In other words, they need pay nothing towards the cost of meeting their needs for care.

The delay is due in part to the enormous pressure on local authorities, which are now required to promote the individual's well-being. This wide-ranging term incorporates personal dignity, control (as far as possible) by the individual of his or her own life, physical and emotional well-being, and facilitating domestic, family and personal relationships in the choice of suitable accommodation. On that basis, the Act should strengthen access to what should be better quality care.

Whilst local authorities back the introduction of the care cap, the Local Government Association has lobbied national government to delay the implementation because it was not possible to deal with the extra demands the changes would bring in the initial timescale.

Interaction with damages awards

The position under the old regime was that, broadly speaking, capital derived from a personal injury award was disregarded in terms of eligibility for state funded care. The position regarding income was less straightforward, in that a local authority could take income into account, but only if the individual was receiving domiciliary care (care within their own home), but that was not the case if the individual was in residential care. The practical effect of that anomaly was that income in the form of periodical payments could be taken into account if that was the policy of the local authority.

Hopefully, that anomalous position has been rectified by the new legislation, and, more particularly, the latter of the two statutory instruments, which corrects the wording of the first, as that appeared to preserve the position under the old regime. Hopefully, income will now fall to be disregarded whether the claimant occupies his or her own home, or is cared for in a home run by the local authority. Unfortunately, the difficult and almost impenetrable drafting style is carried over into the new legislation, which is unhelpful as room for misinterpretation remains.

Finally, the interaction between the care cap and personal injury awards is a further unknown. One view might be that as awards are disregarded in any event, they cannot be taken into account against the £72,000 limit but the appropriate use of personal injury trusts, or a deputyship would effectively ring-fence them from being taken into account by the local authority and used to pay towards care costs.

This article was prepared by Nestor, a team of experienced, independent financial advisers who specialise in providing services to personal injury and clinical negligence legal practitioners and their clients.

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Source articles : [The Care Act – A new broom](#); [Delay to introduction of the care cap](#)

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The Brain Injury Group is a national network of legal and other professionals supporting individuals and families affected by brain injury. www.braininjurygroup.co.uk