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CLINKS BRIEFING

The Care Act (2014) and the voluntary sector working in criminal justice

About this briefing

This briefing, written by ACEVO, explains the Care Act (2014)[1] and its relevance to voluntary sector organisations working with people in prison custody who are resettled back into local communities. It lays out the background to the act, the changes that impact on people in the Criminal Justice System (CJS), and the changes that are relevant to operational staff, and strategic leads, in voluntary sector organisations.

The Care Act (2014): background and context to the Act

The Care Act 2014 has been described by the Government as "the most significant reform of care and support in more than 60 years" and introduces major reforms to adult social care law, how care is funded, the responsibilities of councils and the rights of those in need of social care. The Department of Health[2], the Local Government Association[3] and the Social Care Institute of Excellence[4] all have detailed briefings about the Act and its implications on their websites. These should be read in conjunction with this briefing.

In summary, the Care Act aims to achieve: clearer, fairer care and support; wellbeing – physical, mental and emotional – of both the person needing care and their carer; prevention and delay of the need for care and support; and people who are in control of their care. The Act covers support for learning disabilities as well as physical care needs. Of interest to the voluntary sector working in criminal justice, Section 76 of the Act explicitly makes it applicable to prisoners.

Voluntary sector organisations working in the CJS will already be aware of the high (and in some cases increasing) level of care needs for people in prison, those people being released back into the community, or those serving community sentences. These issues can include, but are not limited to, some of the examples given below:

- The fastest growing age group in the prison population is people aged 60 and over. Between 2002 and 2014 the number of prisoners aged 60 and over grew by 146%.[5]
- On 30 June 2014 there were 11,080 prisoners aged 50 and over, of whom 3,720 were 60 or older, and 102 were over 80. Over 50s now make up 13% of the total prison population.[6]
- Older people in prison often require extra care and support, and two in five (37%) of those over the age of 50 in prison have a disability. Their physiological age is, on average, 10 years greater than their chronological age due to poor health and often poor engagement with healthcare services.
- People in the CJS are disproportionately more likely to have physical and/or mental health problems than the general population. In 2013, 46% of women and 40% of all those aged 40 or older under supervision in the community had mental health

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conditions.[7] 18% of prisoners surveyed by the Ministry of Justice had a physical disability. 60% of prisoners have problems with communication - this includes having difficulty understanding others, clearly expressing themselves, or both[8]. In addition around 5-10% of adult prisoners have a learning disability.

The current provision of health and social care for people in prison custody is reported to be poor . In August 2013, 44% of prisons did not have an older prisoner policy[10]. Until now, ambiguity around responsibility for the care of older prisoners has meant that health and social care services were poorly integrated with prison systems; the Care Act intends to clarify the responsibility for care. Some voluntary sector organisations will already work to meet the care needs of some people in the CJS, but this is not a universal service. With the Care Act and further NOMS work in this area, it is possible that there could be an opportunity for the voluntary sector to lead the way in how prisoners who require health and social care are appropriately supported.

The key changes in the new Act

The majority of the changes introduced by the Care Act, including those relating to provision of social care in prisons, are due to be implemented from April 2015. The Care Act aims to enhance the quality and personalisation of social care, and it promotes better integration of social care with healthcare services. A key principle of the Act is that individuals should be empowered to take part in every decision about their care. However, the Act comes alongside cuts of around 40% to local authority budgets (LGA, 2014), creating a fall in spending while an ageing population is resulting in a rising demand for care.

Section 76 of the Act makes it applicable to prisoners, setting out the responsibilities of local authorities to provide care and support for adult prisoners, and those residing in approved premises such as bail accommodation. The relevant local authority (the local authority in which the prison or approved premises is located, not the local authority where the prisoner comes from) must ensure assessments are carried out. Where prisoners have eligible needs the local authority is responsible for providing services. The Act clarifies the law: current legal opinion and emerging practice both indicate that this should already be the case.

One of the key changes in the act is the introduction of a duty for local authorities to promote the wellbeing of adults. Wellbeing is described as:

- Personal dignity including respect
- Physical and mental health and emotional wellbeing
- Protection from abuse and neglect
- Control by the individual over their day-to-day life (including over care and support provided and the way it is provided)
- Participation in work, education, training or recreation
- Social and economic wellbeing
- Domestic, family and personal relationships
- Suitability of living accommodation

Local authorities should already be compliant with this principle, but it is now a requirement and it extends to people in prison.

Furthermore, a duty has been imposed on local authorities to ensure that social care services are integrated. These include, for example, the NHS and housing services. Around 30% of people

leaving prison have no home to go to upon release. Many people leaving prison are referred into halfway houses or shelters that are inappropriate for their care needs. This is particularly the case for vulnerable individuals[11]. Ensuring that services around social care are integrated with services catering to the other needs of vulnerable prisoners could have a huge impact on their outcomes.

The Act introduces a national minimum threshold for needs assessment. This is a set of standardised national criteria for eligibility for care. Prisoners may be moved between prisons in different local authority areas. If these local authorities are applying different minimum standards for eligibility, prisoners may lose their right to care as they change prisons. Creating national standards will remove the disparity in care eligibility.

Assessments for the kind of care required must now be appropriate and proportionate. They should involve the opinions of a specialist, the person in receipt of care, and the needs of their whole family. A care and support plan must be created, involving the views of the recipient. This is particularly important for people in prison. Prisoners have a much higher incidence of drug addiction and mental health issues than the general population; as described above, people in the justice system often have problems with communication – making it harder for them to express their precise needs. Findings suggest that involvement in treatment decisions – for example, for addiction – can dramatically aid adherence to treatment. This, in turn, can help prisoners bring about positive life changes and consequently aid desistance.

Unlike healthcare provided under the NHS, social care support is not a free service. Prisoners eligible for social care will therefore have to undergo a financial assessment; and may be charged for part or all of the care provided if their income or assets are greater than those set out in the Act. Further changes to how social care is funded under the Care Act, including the introduction of a cap on individual lifetime contributions to social care costs, will be implemented from April 2016.

The Care Act, as the central piece of legislation, will be implemented within the CJS with the support of additional guidance and information. NOMS is working with the Association of Directors of Adult Social Services (ADASS), the Department of Health and the Ministry of Justice to produce practical guidance for commissioners and prison governors on supporting prisoners with significant social care needs, including older prisoners[12]. Its aim is to facilitate joint working between local government and the prison service[13].

These changes are likely to be quite costly, and questions have been raised about how they will be properly resourced. The Department of Health estimates that the cost to local authorities of the Care Act for prisoners will be £9.4 million per year; £7.4 million of this will be spent on people over 50.

How this affects voluntary sector organisations

The changes being introduced by the Care Act may generate new opportunities for voluntary sector organisations working in criminal justice to work with local authorities and prisons to meet the social care and support needs of offenders. The changes being introduced by the Care Act may generate new opportunities for voluntary sector organisations working in criminal justice to work with local authorities and prisons to meet the social care and support needs of offenders.

The needs of people in the CJS must be understood and represented so that they receive the same quality of care as the rest of the population. Healthcare assessments for prisoners do not always fully assess their care and support needs, and the quality of social care currently available

to prisoners is often poor[14]. HM Inspectorate of Prisons has, on multiple occasions, found examples of prisoners whose needs are not known to the officers running the prison. Previously, assessments for social care support had to be agreed on or made by the local authority; but it will now be possible for other providers to assess the eligibility of individuals to receive care.

The Care Act creates a new requirement for an 'independent advocate' to facilitate the involvement of the individual in their own 'assessment, care, and support planning or review'. For many, this will be the family or carer for the individual. Where there is no relative or suitable friend available, this service could be provided by an independent organisation that is able to advocate on the individual's behalf.

There is a clear need for advocates in the CJS who understand the specific circumstances and needs of the prison population, and are suitably independent from the system. The prevalence of learning disabilities is high, with 7% of the prison population having an IQ under 70, and 25% having an IQ of 70-79. There may be an opportunity for the voluntary sector to assist in care planning for individuals; bringing their expertise to advocate and to support offenders on deciding on their care needs. Enabling and assisting people in the CJS to have their say in the care package they receive is essential, and will help redress the balance between the services that exist for people in the community, and those that are in a prison setting.

The Care Act also introduces a duty for local authorities to work on 'market shaping'. This requires them to promote a diverse, high quality market of care and support providers. This range of providers, and the services they offer, must be shaped by the needs of individuals and their families. Personal budgets, and the involvement of individuals in their own care, means that the provider can be personally selected, by the individual, from the market in order to meet their specific needs.

This could encourage a different approach to working with people in the CJS that has rarely been tested. The Care Quality Commission (CQC) has new duties in this market, which should be kept in mind. They must assess the financial sustainability of the most difficult to replace provider of care. The CQC now has the power to engage providers in mitigation planning, through requiring them to develop a sustainability plan, or commissioning an independent review of their business. For voluntary sector organisations involved in providing care, this could be a great burden, and clarity will need to be sought as to whether the process will require a disproportionate allocation of time to satisfy the CQC of an organisation's sustainability. Whether the CQC will favour larger organisations, perceived to present less risk, because of this process remains to be seen.

How the voluntary sector can get involved

There are a number of things that you can do now to make sure that you are ready for the changes that the Care Act will implement. This briefing is a first step in understanding the landscape in which you are working and how the Care Act will change that. Organisations should consider doing further research at a local authority level to find out more detailed information about what services are currently being commissioning. If this is a new area for your organisation, the Local Government Association (LGA) has provided information for providers on the reform to better explain the scale and scope of services delivered.[15]

Clinks have published a briefing about how to navigate the health system, which provides an overview of the health commissioning landscape, explaining the roles of organisations with direct commissioning responsibilities as well as key organisations in a commissioning support role.[16]

Finally, ensure that you are participating in relevant networks/forums, for example, does your local Council for Voluntary Service run a health and care network? Health and Wellbeing Boards often have voluntary sector representatives, find out who these are. It is possible to attend meetings of the Health and Wellbeing Boards[17] as a member of the public.

The Association of Directors of Adult Social Services (ADASS) have an online forum where you can keep up with developments and discussions.[18]

It is far from clear how the expertise and capability of the voluntary sector will be applied in the coming months. However, the sector has a great deal to offer in addressing some of the challenges that have been raised above.

Clinks supports, represents and campaigns for the voluntary sector working with offenders. Clinks aims to ensure the sector and all those with whom they work, are informed and engaged in order to transform the lives of offenders.

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End notes

1. http://www.legislation.gov.uk/ukpga/2014/23/contents/enacted
2. https://www.gov.uk/government/publications/care-act-2014-part-1-factsheets/care-act-factsheets--2
3. http://www.local.gov.uk/care-support-reform
4. http://www.scie.org.uk/care-act-2014/
5. http://www.prisonreformtrust.org.uk/ProjectsResearch/Olderpeopleinprison
6. http://www.prisonreformtrust.org.uk/PressPolicy/News/vw/1/ItemID/245
7. http://www.clinks.org/sites/default/files/Evidence%20submission%20to%20CQC%20-%20Good%20person-centred%20care%20for%20offenders.pdf
8. http://www.learningdisabilities.org.uk/content/assets/pdf/resources/criminal-justice-system.pdf
9. Health and social care services for older male adults in prison: the identification of current service provision http://www.journalslibrary.nihr.ac.uk/hsdr/volume-1/issue-5#abstract
10. http://www.journalslibrary.nihr.ac.uk/__data/assets/pdf_file/0008/76562/FullReport-hsdr01050.pdf
11. https://d19ylpo4aovc7m.cloudfront.net/fileadmin/howard_league/user/pdf/Publications/no_fixed_abode_web.pdf
12. http://www.prisonreformtrust.org.uk/Portals/0/Documents/Bromley%20Briefings/Factfile%20Autumn%202014.pdf
13. http://www.local.gov.uk/documents/10180/5756320/Care+Act+and+Prisons+-+Briefing+note/2aaf1e35-b1f8-41a5-999c-d98905dea85f
14. http://www.communitycare.co.uk/2011/08/01/prisoners-provide-social-care-governors-admit/
15. http://www.local.gov.uk/care-support-reform/-/journal_content/56/10180/6527780/ARTICLE
16. http://www.clinks.org/resources-guides-toolkits/navigating-health-landscape
17. http://www.local.gov.uk/health/-/journal_content/56/10180/3510973/ARTICLE
18. https://knowledgehub.local.gov.uk/group/prisons-and-the-care-act/