

MUNICIPAL YEAR 2014/2015 REPORT NO. 20A

MEETING TITLE AND DATE:

CABINET - 23 July 2014

Council – 8th October 14

REPORT OF: Ray James

Director of Health, Housing and Adult
Social Care

Agenda – Part: 1

Item: 13

Subject: The Care Act 2014

Wards: All

Key Decision No: 3933

Cabinet Member consulted:

Councillor Don McGowan

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1. EXECUTIVE SUMMARY

- 1.1 The Care Bill has completed its passage through Parliament and it received Royal Assent on 14 May. It is now an Act of Parliament (law).
- 1.2 The Care Act introduces a general duty on local authorities to promote individuals' wellbeing and rebalances adult social care towards prevention, wellbeing and independence. From 2015 council's will have a new legal framework for adult social care, putting the wellbeing of individuals at the heart of care and support. The Act will replace a number of separate pieces of legislation with a single modern law.
- 1.3 The Care Act will set out reforms including the way in which adult social care is funded and includes a range of other new duties and functions provided by adult social care services. As well as a review of how we currently discharge our duties, the reforms will require new processes and practices to ensure we discharge our statutory duties and deliver the changes required.
- 1.4 The Act is an historic piece of legislation and a significant programme of change. Draft Guidance and Regulations of Part 1 of the Act and the associated documentation alone is approximately 750 pages.
- 1.5 This report sets out the key requirements of the Care Act, the potential impact on the Council and progress made locally to implement it.

2. RECOMMENDATIONS – Council is asked to note that Cabinet, having considered this report:

- 2.1 Noted that the Care Bill received Royal Assent in May and is now an Act of Parliament.
- 2.2 Noted that the consultation on the draft regulations and guidance for Part 1 of the Care Act has been published; and agree the delegation of the Council's response to the Cabinet Member for Health and Adult Social Care, Cllr Don McGowan; and
- 2.3 Noted the implications of the Care Act on local authorities, and approve progress made locally to prepare for the implementation (see paragraph 6) and the funding allocations attached (see paragraph 7); and
- 2.4 Agreed the progression to a full impact assessment and gap analysis being produced on the basis of the key milestones set out in legislation for 2015 and 2016; and
- 2.5 Noted the potential impact of the Act locally, including key financial risks.

3.0 BACKGROUND

- 3.1 The Care Bill was introduced into the House of Lords in May 2013 and following agreement by both Houses on the text of the Bill it received Royal Assent on 14 May. It is the most significant reform of care and support in more than 60 years, putting people and their carers in control of their care and support.
- 3.2 The current social care legislation has evolved over a number of decades and in a piecemeal manner. The Care Act sets out to consolidate several pieces of legislation with one Act and makes several new provisions. The new legislation is designed to be less complex and easier to apply for all concerned including local authorities and their practitioners and lawyers and, in the case of legal challenges, the Courts.
- 3.3 **The Act is in five parts. Part 1 – Care and Support**, is intended to give effect to the policies requiring primary legislation that were set out in the White Paper *Caring for our future: reforming care and support*, to implement the changes put forward by the Commission on the Funding of Care and Support, chaired by the Economist Andrew Dilnot, and to meet the recommendations of the Law Commission in its report on Adult Social Care to consolidate and modernise existing care and support law. This includes new rights for carers, a statutory framework for Safeguarding Adults and a cap on the costs of care.
- 3.4 **Part 2 – Care Standards**, gives effect to elements of the Government's response to the Mid Staffordshire NHS Foundation Trust Public Inquiry that require primary legislation.
- 3.5 **Part 3 – Health**, makes changes to the Trust Special Administration regime. It also takes forward the necessary legislative measures for the proposals outlined in *Liberating the NHS: Developing the Healthcare workforce - From Design to Delivery*², the establishment of Health Education England as a non-departmental public body; and those in relation to health research that were set out in the Government's *Plan for Growth*³, the establishment of the Health Research Authority as a non-departmental public body.
- 3.6 **Part 4 – Health and Social Care**, establishes a fund for the integration of care and support with health services, known as the Better Care Fund and makes provision for additional safeguards around the general dissemination of health and care information.
- 3.7 **Part 5 – General**, deals with various technical matters such as the power to make consequential amendments, orders and regulations, commencement, extent and the short title of the Act.

4.0 THE CARE ACT IN PRACTICE AND UNDERLYING PRINCIPLES

- 4.1 The Care Act 2014 will make a difference to how people manage their own care and access care and support services. It places more emphasis than ever before on prevention and wellbeing – shifting from a system which manages crises, to one which focuses on people's strengths and capabilities and supports them to live independently for as long as possible.
- 4.2 In many respects the Act is an extension of the principles of Personalisation, such as information for all, access to universal services, the focus on early intervention and prevention and maximising individual choice and control, whilst maintaining a responsibility to care and protect where required. At the heart of the Act is the promotion of wellbeing and outcomes that matter to people and the intention to ensure that people can remain at home as long as possible, using their own resources and continuing to play a part in the community.

- 4.3 The Act sets out duties for local authorities to ensure that people will have access to clearer information and advice to help them navigate the system, and a more diverse, high quality range of support to choose from to meet their needs. It will make the care and support system clearer and fairer for those who need it.
- 4.4 The Act sets out a new national minimum eligibility threshold to help people better understand whether they are eligible for local authority support, and it will enable older people and those with disabilities to move from one area to another with less fear of having their care and support interrupted.
- 4.5 The Act brings in new duties to respond to the needs of carers as they will be put on the same legal footing as the people they care for, with extended rights to assessment, and new entitlements to support to meet their eligible needs.
- 4.6 Of significance is a reform in the way that care and support is paid for. This includes how people pay for care and what financial support they can expect from the state, and making an existing scheme called 'Deferred Payment Agreements' more widely available. The Government has committed to making the changes recommended by an independent commission led by the economist Andrew Dilnot in 2011, which includes a cap on the amount people have to spend on the care they need at £72,000. Additionally, the means testing level has been increased so that state support is available to help to people with modest wealth. These changes will mean that people with around £118,000 worth of assets (savings or property), or less, will start to receive financial support if they need to go to a care home. The intention of the Act is that people are protected from catastrophic care costs and that the people with the least money get the most support.

5.0 KEY REQUIREMENTS AND IMPLEMENTATION TASKS

5.1 The key tasks and dates are as follows:

Key Requirements	Timescale
Duties on prevention and wellbeing	From April 2015
Duties on information and advice (including advice on paying for care)	
Duty on market shaping	
National minimum threshold for eligibility	
Assessments (including carers assessments)	
Personal budgets and care and support plans	
New charging framework	
Safeguarding Adults	
Universal deferred payment agreements	
Extended means test	From April 2016
Capped charging system	
Care accounts	

5.2 Details about the principles of the Care Act and the required changes have been set out by the Local Government Association as follows:

5.3 **FUNDING REFORM (CAP ON COSTS): IMPLEMENTATION APRIL 2016**

Key principles:

- Financial protection: everyone will know what they have to pay towards the cost of meeting their eligible needs for care and support.
- People will be protected from having to sell their home in their lifetime to pay for any care home costs.
- People will be helped to take responsibility for planning and preparing for their care needs in later life.

Important changes

- Introduction of a cap on costs of meeting eligible needs for care and support (to be set at £72,000 for those of state pension age and above when it is introduced) including independent personal budgets and care accounts. The cap will be adjusted annually, as will the amount people have accrued towards the cap.
- No contribution expected for young people entering adulthood with an eligible care need.
- Lower cap for adults of working age (level to be determined).
- Increase in capital thresholds / extension to the means test providing more support to people with modest wealth.
- New legal basis for charging covering both residential and non-residential care.
- Consistent approach towards calculating a contribution towards living costs for people in residential care.
- New framework for eligibility with threshold to be set nationally (to be implemented in April 2015).

What will need to be in place to support implementation of the Act?

- Financial and IT systems to establish and monitor care accounts.
- Arrangements for assessments for all self-funders who ask for a care account.

Suggested key tasks

- Identify local self-funders.
- Estimate time needed to assess self-funders ahead of go live date.
- Estimate cost of meeting care costs for self-funders locally.
- Identify potential impact on current workforce (new skills, capacity and configuration).
- Consider ways of conducting proportionate assessments (including for the significant volume of self-funders who will want to set their care account running) including via third sector or self-assessment.
- Calculate costs of implementation
- Review financial processes, information and advice systems and IT.
- Start a conversation with local providers about the potential impact of the reforms.

Having a good understanding of the volume of self-funders will underpin the planning and preparation for large parts of the Act, as well as inform an understanding of the overall costs of implementation locally.

5.4 **DEFERRED PAYMENTS: IMPLEMENTATION APRIL 2015**

Key principle:

People who face the risk of having to sell their home in their lifetime to pay for care home fees will have the option of a deferred payment.

Important changes

- Everyone in a care home who meets the eligibility criteria will be able to ask for a deferred payment regardless of whether or not the local authority pays for their care.
- Councils will be able to charge interest on loans to ensure they run on a cost neutral basis.

What will need to be in place to support implementation by April 2015?

- Sound financial processes to support increased number of Deferred Payment Agreements (DPAs).
- Sufficient staff / IT capacity.
- Robust financial processes.

Key tasks for councils

- Estimate likely increase in requests for a deferred payment locally.
- Review existing arrangements for DPA – workforce capacity, IT, finance.
- Estimate implementation costs (average length of stay in residential placements, average client contribution).
- Estimate related costs (properties subject to a DPA may be exempt from council tax).

5.5 **ADDITIONAL ASSESSMENTS AND CHANGES TO ELIGIBILITY: IMPLEMENTATION APRIL 2015**

Key principles:

- Early intervention and prevention: supporting people as early as possible to help maintain their wellbeing and independence.
- Eligibility to be set nationally based on risk to the individual's wellbeing (as opposed to the risk to the individual's independence).
- Focus on outcomes and wellbeing.
- Assessment to take into account the needs of the whole family as well as of any carers.
- New arrangements for transition to adult care and support.

Important changes

- Councils will have a new duty to carry out a needs assessment for all carers (no longer dependent on the cared-for person meeting the FACS eligibility criteria).
- New duty to provide advice and information to service users and carers who do not meet the eligibility threshold.

- Duty to assess young people, and carers of children, who are likely to have needs as an adult where it will be of significant benefit, to help them plan for the adult care and support they may need, before they (or the child they care for) reach 18 years.
- Legal responsibility for local authorities to cooperate to ensure a smooth transition for people with care needs to adulthood.
- New national eligibility threshold.

What will need to be in place to support implementation by April 2015?

- Expanded assessment capability to cope with increased demand.
- Assessment process that is focused on outcomes and wellbeing.
- Strong and effective partnership working across adults' and children's services during transition.

Key tasks for councils:

- Estimate the volume of additional assessments locally and the cost.
- Review assessment process to ensure it focuses on prevention and wellbeing.
- Review support and arrangements for young people and their families during transition – update procedures and training.
- Ensure workforce skills, configuration and capacity are sufficient to meet new demand and legal duties.
- Consider how assessments will be carried out for local self-funders.

5.6 ADVICE AND INFORMATION: APRIL 2015

Key principles:

- Information should be available to all, regardless of how their care is paid for.
- Good quality, comprehensive and easily accessible information will help people to make good decisions about the care and support they need.
- Councils have a key role in ensuring good quality advice is available locally and for sign posting people to independent financial advice.

Important changes:

- Councils will be required to provide comprehensive information and advice about care and support services in their area and what process people need to use to get the care and support that is available.
- They will also need to tell people where they can get independent financial advice about how to fund their care and support.
- Councils will be required to provide independent advocates to support people to be involved in key processes such as assessment and care planning, where the person would be unable to be involved otherwise.

Key tasks for councils

- Review existing advice and information services: ensure adequate funding and capacity.
- Review advice, advocacy and brokerage services locally.
- Ensure good quality financial information and advice independent of the local authority is available and people know how to access it.

5.7 COMMISSIONING: IMPLEMENTATION APRIL 2015

Key principles:

- A wide range of good quality care and support services will give people more control and choice and ensure better outcomes.
- Councils have an important role in developing the quality and range of services that local people want and need.
- Integrated commissioning with key partners, including health and housing, is essential to ensure quality as well as value for money and improve user satisfaction.

Important changes

- Duty on councils to join up care and support with health and housing where this delivers better care and promotes wellbeing.
- Duty on councils to ensure there is a wide range of care and support services available that enable local people to choose the care and support services they want (market shaping).
- New right to a personal budget and direct payment.

Key tasks for councils

- Review commissioning arrangements including capacity, skills and leadership.
- Develop market position statement(s) which clearly identify strengths / weaknesses in local provision.
- Review engagement / dialogue with local providers and service users.
- Use Better Care Fund (formerly Integration Transformation Fund) to promote coordinated health and social care which focuses on early intervention and prevention, and avoids duplication of process.

6.0 CURRENT PROGRESS TOWARDS IMPLEMENTATION OF THE CARE ACT

- 6.1 A Programme Board with accompanying work streams has been established in order to oversee the changes required locally, with an appropriate programme management infrastructure to oversee the work. The Board is chaired by Bindi Nagra, Assistant Director Strategy and Resources in the Councils' Health, Housing and Adult Social Care Department. Mr Nagra is also the Council's named Senior Responsible Officer (SRO) for the purposes of implementing the Act.
- 6.2 As noted the first key task for the Council is to fully understand the impact of the Act locally and an impact analysis is being undertaken. Other priority tasks underway are:
- Identifying the risk associated with the implementation of the Act including a full risk assessment
 - Understanding the opportunities presented by the implementation of the Act including a benefits map
 - Raising awareness of the Act including briefings for all stakeholders starting with staff and providers (further information will be made available as they are developed)
 - A review of the Guidance and Regulations of Part 1 of the Act with an initial focus on the most contentious or high risk areas e.g. ordinary residence, eligibility, continuity of care, the cap and charging, transition.
 - A local response to the Regulations and Guidance - the Government has opened a 10 week consultation period <http://careandsupportregs.dh.gov.uk/>
 - Undertake research into the self-funders market

- 6.3 It should be noted that the Council has already established arrangements in a number of key areas of the Act so has strong foundations to build on. This is most evident in our Personalisation arrangements such as information and advice, early intervention and prevention and a scheme for Deferred Payment Agreements. Even so, the Act represents a significant programme of change.

7.0 THE FINANCIAL IMPACT OF IMPLEMENTING THE CARE ACT

- 7.1 The Government has made available an allocation to support local authorities in implementing the Care Act reforms, as follows:

Year:	2014/15			2015/16		
	Revenue	Capital	Total	Revenue	Capital	Total
Details/ Summary	£	£	£	£	£	£
Care Bill Implementation Grant 2014/15	125,000	0	125,000			0
Care Bill implementation funding in the Better Care Fund (£135m nationally)				725,000	271,000	996,000
Social Care New Burdens				1,542,000	270,000	1,812,000
	125,000	0	125,000	2,267,000	541,000	2,808,000

- 7.2 This above breaks down the allocations of Adult Social Care new burdens funding and the Better Care Fund element to cover implementation of the Care Act, which includes funding associated with the Dilnot reforms. It is important to note that the allocations may not reflect the full cost to the Council, so should be treated as indicative only.
- 7.3 The cap on the costs people will have to pay for their care and the increase of the capital thresholds is likely to be the most significant cost pressure resulting from the Act. It is expected that this will take effect in 2018/19, 3.5 years being the time expected for people to reach the cap. However, it is important to note that the wider reforms such as the increase in assessments, new rights for carers, developing the market, and the new business processes and costs relating to IT and finance systems e.g. for care accounts to calculate progression towards reaching the cap, will also have a financial impact.
- 7.4 Last July London Councils published their analysis of the potential financial impact of the reforms, and this indicated that the funding allocations to cover the cost of implementation will fall far short of the expected costs. It also identified that people living in London will reach the cap earlier than other parts of the country, adding to the financial burden. The report, Care and Support Reform: Cost implications for London¹, states:

"The government has announced that from April 2016 a cap will be introduced limiting the amount of money people will have to pay towards their care. This cap will be set at

¹ Care and Support Reform: Cost implications for London <http://bit.ly/1a7ubwm>

£72,000. The government will also raise the means testing threshold at which people are eligible for support from local authorities, from the current £23,250 to £118,000. London Councils has analysed the cost implications of these reforms, illustrating the additional cost pressures that can be expected by London boroughs.

Cost pressures in London

London Councils' analysis has found that the potential total additional cost pressure that local authorities could be faced with by 2019/20 as a result of introducing the cap and raising the threshold AND the on-going social care cost pressures is approximately £1.3 billion. Approximately £877² million of this will be as a direct result of implementing the capped cost model for care and raising the eligibility threshold over the first four years.

National cost pressures

The government's estimates of providing £1 billion per year to fund the funding reforms nationally is inadequate. London Councils' analysis has found that the reforms nationally over four years will cost in the region of £6 billion – on average £1.5 billion per year (cost pressures will be heavily weighted in the first and fourth year of implementation)."

- 7.5 At local level we will develop a robust financial model to enable the Council to manage the impact of the reforms and the initial exercise of understanding the self-funders market is being undertaken as a priority.

8.0 ALTERNATIVE OPTIONS CONSIDERED

- 8.1 It is a statutory requirement to implement the Care Act, so no alternative options have been considered in the drafting of this report.

9.0 REASONS FOR RECOMMENDATIONS

- 9.1 It is a statutory duty for local authorities to implement the Care Act. It is essential that Cabinet is aware of the reforms and the implications for the Council.

10.0 COMMENTS OF THE DIRECTOR OF FINANCE, RESOURCES AND CUSTOMER SERVICES AND OTHER DEPARTMENTS

10.1 Financial Implications

As stated above, the Care Act requirements are to be introduced by April 2015. The table under paragraph 7.1 above shows the grant allocations of £125k in 2014/15. Each Local authority has been awarded this allocation to "provide additional support to local Authorities for them to build change management capacity to implement the requirements of the Care Bill" (DoH circular ref: LASSL (DH)(2014)1)

A further £2.8m of grant funding has been allocated in 2015/16, of which revenue funding has been identified from the Better Care Fund (£725k), Social Care New Burdens (£1.54m) and capital funding of £541k.

As the report states the financial impact of the Care Act changes will be of a material nature. However these are unquantified at a local level, based on national estimation, once quantified this will add significant pressure to the council medium term financial plan for 2018/19 (approx. £8-15m), as the council will now need to provide care to self-funders once they reach the £72k cap and collect less income from clients that currently contribute towards their care costs.

² It is important to note that at the time of the financial modelling not all data was available regarding the working age thresholds of the cap.

When the government introduced the Care Bill it carried out an Impact assessment and advised that any new burdens on local government would be funded. However local government has been concerned for some time that there is potential for significantly greater costs than currently provided for by government.

This issue has been included in the Council's Risk Register; however it remains very difficult to accurately model the financial consequences of this significant change to legislation.

Recently the Local Government Association (LGA) has worked with London Councils, Chartered Institute of Public Finance and Accountancy (CIPFA) and the Association of Directors of Adults Social Care (ADASS) to distribute tools to help model the costs in a consistent way across the Country.

The full cost of implementation is unlikely to be felt until 2018/19 and we will continue to model and monitor the likely costs in intervening years.

It should also be noted that a number of the implementation costs, in particular on IT and staffing, are unknown at this stage. It is envisaged that the grant allocations for 2014/15 and 2015/16 will be used in the first instance, however it would be prudent to identify one off resources in addition to the grant allocations to cover any additional pressure.

10.2 Legal Implications

The Care Act 2014 received royal assent on 14 May 2014. Key implementation dates are April 2015 and April 2016. When it comes into force it will affect the law concerning the care of vulnerable adults.

The Care Act 2014 will impose a number of duties on local authorities and as yet the guidance is only in draft. It is therefore not possible at this stage to be definitive about the exact nature of the requirements which the Act will impose.

10.3 Property Implications – none identified.

10.4 KEY RISKS - as noted, the Programme Board is currently in the process of analysing the impact of the Care Act reforms including a gap analysis. This will be followed by identification and assessment of the risk to enable us to fully understand the impact to the Council. It should be noted that until such tasks as the self-funders research is complete, some assumptions will need to be made. What is clear is that there is considerable financial risk to the Council, at a time when we are required to make significant savings.

10.5 IMPACT ON COUNCIL PRIORITIES – the Care Act will have a positive impact on the council priorities and local community. New assessment arrangements and eligibility criteria will help to provide fairer access to services, including how it is funded. It will encourage active citizenship by strengthening our Personalisation arrangements and supporting people to be independent and improvements to our information and advice services will impact on the provision of high quality, affordable and accessible services for all.

10.6 EQUALITIES IMPACT IMPLICATIONS (EIA) – a full impact assessment will be undertaken once the implications and risk business processes are completed.

10.7 PERFORMANCE MANAGEMENT IMPLICATIONS - the implementation of the Care Act will contribute to the achievements of the council and Enfield 2017.

10.8 HEALTH AND SAFETY IMPLICATIONS – none identified.

10.9 HR IMPLICATIONS - the implementation of the Care Act will require changes to practice and business requirements. It is not known at this stage what and if there are human resource implications. This will require ongoing review and reporting as necessary.

10.10 PUBLIC HEALTH IMPLICATIONS - the Care Act is about promoting independence and improving the health and wellbeing of local people, so has a direct link to public health. It will promote community networks and healthy lifestyles as people will be able to take more control of how they manage and access their own care and support.

Background Papers – none.