

# HEALTH AND WELLBEING BOARD

10 DECEMBER 2013

<b>Title:</b>	<b>The Care Bill: Adult Social Care Funding</b>		
<b>Report of the Corporate Director of Adult &amp; Community Services</b>			
<b>Open Report</b>	<b>For Information</b>		
<b>Wards Affected: ALL</b>	<b>Key Decision: No</b>		
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<b>Sponsor:</b> Anne Bristow, Corporate Director of Adult & Community Services			
<b>Summary:</b>	<p>At its meeting in November 2013, the Health and Wellbeing Board received an overview of the changes outlined in the Care Bill and the perceived impact that they will have locally. The Board agreed to devote a substantial amount of time over the coming year to the Care Bill, particularly as more details become available and the detailed implications are worked through. The Board also agreed to receive reports on aspects of the Care Bill at alternate meetings over the next year.</p> <p>This report details the huge changes that will affect individuals, their families and partners in relation to social care contributions. These changes include a proposed £72,000 cap on care costs, financial support for those under substantially increased thresholds of assets, a universal deferred payment scheme and a standard contribution that individuals will be expected to pay towards their living costs (of around £12,000 a year).</p> <p>Section three of this paper discusses some of the issues that have been put forward locally in response to the proposals and it is suggested that these form the basis for a discussion at the Health and Wellbeing Board. A presentation will also be given at the meeting to build upon some of the details in this report and to show examples and case studies of how the funding reforms will affect people in Barking and Dagenham from 2015/16.</p>		
<b>Recommendation(s)</b>	<p>The Health and Wellbeing Board is recommended to:</p> <ul style="list-style-type: none"><li>• Note the wide ranging implications of the social care funding reforms put forward in the Care Bill for individuals, their families, the local authority and other partners;</li><li>• Discuss some of the issues that have been identified locally in response to the funding reforms and think through how the Health and Wellbeing Board may help prepare for the changes, not only in constituent organisations, but also readying individuals and families in the Borough.</li></ul>		

## 1. Background

- 1.1. The Care Bill is a far reaching piece of legislation, which whilst primarily introducing changes to the provision of adult social care will have significant implications for the local health economy as a whole, both financially and operationally. The Bill is currently moving through the parliamentary process, awaiting a date for its second reading in the House of Commons, and is expected to receive Royal Assent in mid-2014. However, key guidance on aspects of the legislation may not be available until much later in 2014.
- 1.2. A summary of the Bill and the expected implementation dates of key aspects of the Bill were discussed at the last Health and Wellbeing Board meeting in November, along with a first look at the impact that the Bill will have in Barking and Dagenham. The Board agreed to devote a substantial amount of time over the coming year to the Care Bill and to receive reports on aspects of the Bill at alternate meetings over the next year. The link to the initial Care Bill report in November and the minutes of the meeting can be found here:  
<http://moderngov.barkingdagenham.gov.uk/ieListDocuments.aspx?CId=669&MId=7077&Ver=4>.
- 1.3. The focus for this report is that of the new arrangements proposed in the Care Bill for the contributions that Adults will be asked to make to their social care costs. This is arguably one of the largest changes put forward in the Bill and will have a significant impact both on local residents and their families, but also on the local authority and other partners.
- 1.4. The equitable and sustainable funding of social care has been a hotly debated topic; there have been many attempts to review the way in which social care is funded and how the costs of these services are shared between the individual and the state. This has included the review of adult social care legislation carried out by the Law Commission in May 2011 and the Dilnot Commission on Social Care report published in July 2011, which found that social care funding was unfair and unsustainable. The Care Bill is a response to the findings of the Dilnot Commission and many of Dilnot's proposals are being implemented in the new Bill. Please see **Appendix 1** for the government's response to the recommendations put forward by the Dilnot Commission.
- 1.5. This report will review the changes to Adult Social Care funding and contributions as well as the initial local response to these proposals which formed the Borough's response to a recent Department of Health consultation on the topic. These issues, which will be teased out further by an accompanying presentation at the December Health and Wellbeing Board meeting, will form the basis for a wider discussion about the funding reforms, their perceived impact and the preparations that the Board and its partners will need to take prior to implementation of the Bill in 2015/16.

## 2. Overview of the changes proposed

- 2.1. The following is a summary of the changes that are proposed in the Care Bill relating to social care funding:
- 2.2. **A cap will be introduced on the costs that people have to pay to meet their eligible needs (from April 2016).** The most significant of the changes relate to Dilnot's findings, with the aim of trying to make the cost of paying for care fairer. This

includes the introduction of a £72,000 cap on lifetime costs in respect of care, although this is less generous than commonly believed as individuals must first meet new national eligibility criteria. The cap is expected to be set at £72,000 in April 2016 for people of state pension age and over, and lower for working age adults. The cap will be reached based on the contributions of both the local authority and the individual.

- 2.3. **A 'Care Account' will be an up-to-date record of a person's accrued total care costs** and local authorities will be required to keep a care account for adults whose care costs are counted towards the costs cap. Once the cap is met, the local authority will be responsible for meeting the costs of care, excluding £12,000 in living costs per year (see para 2.4 below).
  - 2.4. It should be noted that free care will be given to people who turn 18 with eligible needs, however we do not yet know how the 'sliding scale' between 18 and 65 will be set for those developing eligible care needs well before their older age.
  - 2.5. **Financial support will be provided to more people to help them with their care costs (from April 2016).** This will help people with their care home costs if they have up to £118,000 in assets (including their home); the current threshold is £23,250. Where the value of someone's home is not counted as they continue to live at home, it is intended that financial support will be provided with care costs to people who have up to £27,000 in assets. As a result, all local authorities are likely to be asked to provide care support for increased numbers of individuals with eligible needs.
  - 2.6. **A standard contribution to living costs of around £12,000 a year will be set (from April 2016).** People in care homes will remain responsible for their living costs or 'hotel costs' when they reach the cap if they can afford to pay them, equivalent to £12,000 from April 2016. The hotel costs will not count towards the care cap.
  - 2.7. **A universal deferred payment scheme may be implemented (from April 2015).** This means that from April 2015 individuals will be given the option of deferring payments for their care until death to avoid selling their home. However, if individuals hold liquid assets in excess of an amount (to be determined), they may not be allowed to enter a deferred payment arrangement. Local authorities will be able to charge interest on these deferred payments.
  - 2.8. **A duty for local authorities to provide information and advice, particularly how to access independent financial advice (from April 2015).** Local authorities will be under a duty to provide care and support information from April 2015, including information on how residents can access independent financial advice to support financial planning.
- 3. Issues with the proposed funding reforms for the Board's consideration**
- 3.1. The Department of Health undertook a consultation to seek views on the funding reforms set out above to ascertain how changes to the funding system should be organised locally, with a view to informing the development of detailed policy and regulations and guidance (subject to the successful passage of the Care Bill through Parliament). The consultation asked many questions, particularly focusing on policy design, the technical implementation of deferred payment agreements and the new

charging rules, and asked for local opinions regarding the care cap and access to financial support. Responses were asked to be submitted by 25 October 2013.

- 3.2. The local authority submitted a response, informed by a consultation event in October that was held with social care managers and third sector partners and providers in October. The event clarified some of the thoughts on how the proposals may impact upon the Borough locally, and posed a number of questions which the Department of Health will need to work through in drawing up guidance.
- 3.3. The local response to the consultation can be summarised under the headings below and are useful in teasing out some of the issues posed by the proposals in the Care Bill. A presentation at the Board will build upon this response, using case studies and real life examples, to precede a discussion at the meeting.
- 3.4. The Health and Wellbeing Board are asked to consider the issues below and particularly think about how the Board can help to prepare local residents and their families for the changes and what partner organisations will need to do to support their implementation.

### **3.5. Information, advice and communication**

- The public need to understand that these new changes have not made care free at the point of use, in the same way as the NHS. Thought needs to be given as to the way that the message is given nationally and locally, particularly relating to the costs and the contributions involved in social care. The Health and Wellbeing Board may play a focal part in how these messages are promoted in Barking and Dagenham.
- Some form of 'care cost calculators' (similar to the mortgage calculators available on banks' websites) would be helpful in order that residents can work out the level of contributions that they would be likely to pay. However, these tools should not replace face-to-face advice. ADASS and other sector leaders have been pressing Government for some form of standard 'tool' for the public to use to estimate their liability for the cost of care, along with some very clear messages about standard expectations of the new care system.
- The current availability of independent financial advice around social care options is limited and local authorities and by extension Health and Wellbeing Boards will need to work with national government, voluntary sector organisations and financial services organisations to ensure that people have access to the information and advice they need to make the right choices about their care and support.

### **3.6. Financial planning implications**

- There are huge concerns that with many people not enrolled in a pension until auto-enrolment forced the issue, and with many understandable pressures on their income, residents will be unlikely to prioritise saving for their social care costs. There are issues here relating to how this will be communicated and what insurance products or auto-enrolment options will be put forward. One element put forward in our local response was whether tax incentives, much like pension tax relief, could be used as a good

incentive to take up recognised insurance products from the financial services market.

- It is also thought that more people will sign their properties over to their children in order to avoid care costs and it is not clear how the local authority would work through this issue if the universal deferred payment scheme was put in place.
- Finally, it has to be presumed that some legislative safeguards, similar to the existing deprivation of assets rules (which govern how local authorities treat people's 'running down' of their means-testable assets), would continue to apply.

### **3.7. Too much focus on residential care?**

- There are concerns that the Bill places too much strength on residential care as a care option and that this may not facilitate a balanced approach when individuals and their families are making difficult decisions on care. This is also likely to run counter to the prevailing policy on increasing personalisation, choice and control, and moving care 'closer to home'.
- It is important that all partners in the local health economy are thinking carefully about their role in supporting good, sensible long-term care decisions and that they too are not encouraging individuals towards entering residential care when that may not be in their best interest. The Health & Wellbeing Board may have a key role in fostering the debates and discussions around professional practice and advice to respond to this, backed up by analysis of changing flows of people into residential care from, for example, hospitals.
- Overall, the funding reform debate is too focused on finance and charging and protecting assets and should also focus on care standards, quality and people choosing the 'right' care.

### **3.8. Regional variations in costs and assessment**

- There are concerns that thresholds will be applied on a national basis and this may be based on national costs that might not apply to the cost of care provision in London. This also applies to the level of the 'daily living' allowance, which may differ across the country in terms of what seems reasonable. Issues such as the London Living Wage, the level of rents in London and the impact of welfare reform (including the 'bedroom tax') should be taken into account.

### **3.9. Implementation issues**

- There is a very real concern about the provision of adequate resources to meet the expected spike in assessment activity. Current self-funders will now have an interest in coming forward for assessment in order that they begin to contribute towards the care cap from 1 April 2016. The Council has estimated an additional 5,600 assessments may need to take place in the period from 2015 to 2017 in order to assess hitherto unassessed needs. This will put pressure on resources for assessment activity and responding to identified need and will require a fundamental change in IT management systems.

- The changes will also have real resourcing issues for those in the third sector and in welfare benefits advisory roles as residents understand the funding reforms and consider how they impact upon them. It is also not clear how care contributions will link to other benefits. As an example, currently someone can be in receipt of attendance allowance but not meet local authority care thresholds and it is not clear whether there will be alignment on this in the future. It is similarly unclear how the contribution to living costs (maximum £12k) will be means-tested, bearing in mind that the basic state pension would be considerably less than this sum.

### **3.10. Queries regarding deferred payments**

- Debates are currently taking place in parliament which has led to concerns that the deferred payment option will not be universal, but instead be available just for those with less than £27,000 in assets. The debate is focused on whether deferral would only be available to those whose assets to be protected are property-based, rather than cash savings for example.
- There are also lots of questions remaining on whether the living cost can be made deferrable as well as the care costs and how a charge on a property that underpins a care debt stands in relation to other debts and claims against the estate or the property. The local authority also has concerns that with mortgages being a 'first charge', and the care debt increasing over time, it would be concerning if there was a possibility of being unable to reclaim the full debt because the property has been remortgaged (or burdened with other secured debts) after care debts became secured against it.
- There will also be a risk that, should a property deteriorate in the years that the owner is in care, in some parts of the country the value of the property could drop below the outstanding debt.

### **3.11. The management of the Care Account**

- The Care Account poses a number of challenges for local authorities, and tracking people's progress towards the cap will be a significant endeavour. For example, the question arises as to how the local authority will know of self-funders, and changes to their circumstances or care purchasing decisions, in order to keep the Care Account updated. Whereas those self-funding residential or nursing care can be relatively easily identified, in the community it will be more challenging. If there is no need of local authority support, they may well not proactively approach the council until a point at which their affairs take some time and work to clarify.
- The voluntary sector may prove to be a valuable source of information about self-funders, and some guidance to promote proactivity in sharing records may well yield valuable information that can allow the Council to act promptly to begin people's Care Accounts. Again, the Health & Wellbeing Board may have a facilitative role in this regard.
- There will need to be clear processes for taking the Care Account between different authorities. This raises the concern about where the Care Account is stored, and any national standards about record-keeping for the Account, which we would expect to see in regulations or statutory guidance.

## **4. Next Steps**

- 4.1. As discussed at the last Health and Wellbeing Board meeting, the Council has set up a Adult Social Care Reform Programme Board to work through the implications of the Bill and prepare for its implementation. The Programme Board is meeting regularly and regularly reviewing communications that are coming from the Department of Health as well as the current debates that are taking place in the Houses of Parliament as the Bill moves through the process to Royal Assent.
- 4.2. It is hoped that the response from Barking and Dagenham to the Department of Health, along with similar responses from the Association of Directors of Adult Social Services, the Local Government Association, London Councils and other professional bodies will help shape the continued development of the funding reforms and the subsequent regulations and guidance. The local authority will continue to consult and work with partners, the third sector and other providers as further communications are made relating to the funding reforms and the wider Care Bill and these will be brought to the Health and Wellbeing Board for consideration.

## **5. Mandatory Implications**

### **Joint Strategic Needs assessment**

- 5.1. The Joint Strategic Needs Assessment currently describes demand for social care services based on current systems of provision and understanding of the future demography of the borough. New demographic projections have recently emerged and, together with the radical changes to the delivery mechanisms for social care which are set out in the Bill, substantial revision of the JSNA's analysis will be required as the implications are better understood.

### **Health & Wellbeing Strategy**

- 5.2. The Health & Wellbeing Strategy sets out the Board's strategic intentions to 2015, which is when the majority of the Care Bill's implementation is due to commence. The next iteration of the Strategy will therefore need to deal in some detail with the future direction of social care services as part of an overall health and social care system. In parallel to this legislative development, there are significant moves towards greater integration of services which will also drive changes in the wider health and social care economy, and which will need to be core to the revised Health & Wellbeing Strategy.

### **Integration**

- 5.3. Whilst integration is a significant policy driver around health and adult social care at present, the Care Bill is less clear on the contribution it will make to promoting integration. The underlying principle remains that social care services are chargeable and provided subject to a separate eligibility assessment, while the NHS is free at the point of delivery funded from general taxation. At its last meeting, the Health & Wellbeing Board also commented on the issues at the interface between the Care Bill and the Children & Families Bill, where young people with disabilities transfer into adult services.

## **Financial Implications**

Completed by: Roger Hampson, Group Manager, Finance (Adults)

- 5.4. From April 2015, there will be a universal requirement for local authorities to offer deferred payment agreements to care users who meet certain criteria; and although the increased financial threshold and the cap on care costs do not come into force until April 2016, local authorities will face transitional costs in 2015/16. To meet these costs in 2015/16 the Government will be providing a £285m revenue grant. Of this, £110m is to cover the cost of deferred payments, and £175m is to cover the capacity building and early assessments required for transition to the capped cost model. In addition the Community Capacity Capital Grant, which will form part of the pooled Integration Transformation Fund in 2015/16, will include £50m for IT changes necessary for integration and funding reform. The amounts to be allocated to Barking and Dagenham from these national funds are not yet known.

Other policies in the Care Bill will also lead to additional costs, including new duties for the assessment and support of carers, better provision of information and advice, and a national minimum eligibility framework. Further detailed work is needed to assess the full impact of the Social care funding reform for the Council in 2015/16 and beyond, but preliminary estimates indicate a potential cost of £10m to £12m in 2016/17. This further work will be overseen at officer level by the Adult Social Care Reform Programme Board.

## **Legal Implications**

Completed by: Dawn Pelle, Adult Social Care Lawyer

- 5.5. There are no further legal implications that have not been identified in the body of the report.