

HEALTH AND WELLBEING BOARD

29 JULY 2014

Title:	The Care Act 2014
Report of the Corporate Director of Adult and Community Services	
Open Report	For Decision
Wards Affected: ALL	Key Decision: NO
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Sponsor: Anne Bristow, Corporate Director, Adult and Community Services	
Summary: This report updates the Board on the adult social care reforms following the Care Bill being granted Royal Assent by Parliament. In particular the report seeks to: <ul style="list-style-type: none">• Remind the Board of the thrust of the Care Act and its major provisions.• Alert the Board that the draft statutory guidance and secondary legislation is out for consultation.• Highlight to the Board key issues contained within the detail of the Act, guidance and regulations and flag issues which have a significant impact on the Council or relevance to partner organisations.	
Recommendation(s) The Health and Wellbeing Board is recommended to agree: <ul style="list-style-type: none">(i) That the draft response attached at Appendix 2 will be the response on behalf of the Health and Wellbeing Board to the consultation on the Care Act draft guidance and regulations.(ii) Actions to be undertaken by partner organisations to contribute to the implementation programme.(iii) To schedule further Care Act programme implementation reports to ensure the H&WBB is well-sighted on issues and to further explore issues or parts of the implementation that impact on partner organisations.	
Reason(s) Successful and seamless delivery of the Care Act by April 2015, and April 2016 for the funding reforms, is crucial for the Council to meet its statutory obligations to residents who have eligible or unmet social care needs. The Adult Social Care Reform Programme therefore contributes to the corporate priority of having a well run organisation. The Care Act itself will contribute to the corporate priority of improving the health and	

wellbeing for residents. New duties mean that the Council has responsibility to prevent and delay a person's need for care and Councils must have regard to a person's holistic wellbeing at all stages of that person's journey through the social care system.

1. Introduction

- 1.1. The Care Act 2014 received Royal Assent on 14 May 2014 and is being brought into force via a complex series of regulations and annexes, as well as statutory guidance. The provisions of the Act and its associated guidance will come into force in two phases: April 2015 and April 2016, as shown in Table 1 below.

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

- 1.2. The main provisions of the Act are summarised in Appendix 1 for ease of reference, although commentary on the implications of some key aspects is provided in section 2 of this report.
- 1.3. The Government is currently consulting on the detailed provisions as set out in the draft regulations and associated guidance and inviting comments by 15 August 2014.
- 1.4. Whilst officers are contributing via regional events to the responses being prepared by the Local Government association (LGA) and the Association of Directors of Adult Social Services (ADASS) it is also proposed that the response attached as Appendix 2 is submitted on behalf of this Health and Wellbeing Board.
- 1.5. Members should however be aware that given the extensive nature of the draft regulations and guidance and the engagement work undertaken with the sector (principally LGA and ADASS) it is not anticipated that there will be further significant

or wholesale changes. The final regulations and associated guidance are due to be published in October/early November - less than six months prior to them coming into force in April 2015.

- 1.6. At the same time further draft guidance for the provisions due to come into force in April 2016 is due to be issued in the autumn. It is essential therefore that implementation planning for the April 2015 changes proceeds on the basis of the draft regulations. Even working on this basis the scale of change is significant and is likely to require additional short term staffing resources to enable the authority to meet this challenging implementation timetable. The anticipated costs can be met from within existing resources.

2. Some challenges posed by the legislation

2.1. Information and Advice

- 2.1.1. The regulations and guidance extend the duties placed on the local authority much further than anticipated. The extent of the 'offer' goes much further than the service we currently provide and includes much wider general advice on care and support options and likely costs, the process of assessments and who may or may not receive help, and signposting for specialist independent financial advice.
- 2.1.2. At several points it states that it will not be sufficient to seek to discharge our responsibility to provide information and advice by signposting people to information on websites. Given the different push by the Cabinet Office for local government to encourage digital take up and to achieve economies and efficiencies through channel shift this would seem to be a contradiction in policy terms which has real implications for us.
- 2.1.3. This is further compounded by further requirements to '*personalise*' any information or advice provided and to provide a copy of the information or advice in writing at various stages of the assessment, review or service provision. This will require system and procedural changes if we are to be able to achieve this without writing a bespoke letter on each and every occasion.

2.2. Assessment and eligibility

- 2.2.1. This changes the legal foundation of the assessment requiring that the assessment is initially conducted as if no informal support is available; in other words based on the needs if there was no informal carer input available, to arrive at the eligible needs. This will potentially bring many more people into the ambit of requiring an assessment and being eligible for support, whether they require it or not at the moment, and we anticipate a growth in people coming forward to request an assessment.
- 2.2.2. The Guidance makes clear the Department of Health view that much of this work is complex and requires the skills most commonly found in Registered Social Workers. Perhaps, fortuitously, we have been moving back towards a fully qualified workforce over a number of years and so this is unlikely to pose any particular problems in Barking and Dagenham but may do so elsewhere.
- 2.2.3. It also will require each individual to be given a 'ball park' figure of the likely sum of money that will be made available to meet their needs early in the process although it allows for revision as the care and support plan is finalised. The intention is this will allow service users to better understand the choices available to them for meeting

their care needs. It also requires that the process for determining the amount of cash to be made available is published in a clear and transparent format that is easy to understand.

- 2.2.4. Separately informal Carers will have strengthened rights to their own assessment and allocation of resources to meet their needs and enable them to continue to carry out their caring role. The issues to be taken into account in determining their needs are wider than at present including support for them to work and to pursue recreational interests.
- 2.2.5. It is not clear yet where the final eligibility test will lie and how it will compare with our current thresholds, whether this will lead to more or less people being eligible for support overall. It still seems probable that it will be broadly similar, but as late as early July the formulation being proposed was still being tested.
- 2.2.6. However, what is introduced by the regulations and guidance is a new obligation to promote wellbeing and a duty to provide or arrange for services that would prevent, delay or reduce a person's need for care and support or the needs for support of their carer. This will have the effect of introducing responsibilities towards a whole cohort of people who currently do not get access to services as they do not meet the authority's eligibility criteria.
- 2.2.7. Furthermore, we are expected to develop a Prevention Strategy that looks at present and future demand and sets out how we will meet this new duty. In this context we are reminded of the duty of key partners to co-operate (particularly the council and the NHS) and the focus expected on integration.
- 2.2.8. Throughout the documents it is made clear that it is expected that everyone will have a Personal Budget (including for carers in their own right) though it is accepted that as now it can be one of several types of Personal Budget:
 - a managed Personal Budget where the local authority arranges and provides the services;
 - an individual service fund where a specific pot of money held by a service provider with the service user directing how it is spent
 - a Direct Payment
- 2.2.9. Not surprisingly the preference as now is for more Direct Payments. Again there is emphasis on joint Direct Payments with health services but given the very low numbers¹ currently available in our local health economy this will be an area requiring development.
- 2.2.10. The complexity that may arise in some caring situations is acknowledged and guidance provided on possible solutions. Whilst the concept of Direct Payments is promoted in the Children and Families Act it is used to mean a payment to the parent /carer (not a payment for the child or young person paid to the parent/carers) and we could anticipate some transition issues arising as the balance shifts to making payments to the young person even if a carer's direct payment was also proposed.

¹ Less than 10.

2.3. Advocacy

2.3.1. Throughout the documents it states that there will be a requirement to offer or provide suitable trained and qualified independent advocacy support at a wide range of stages of all the processes envisaged. It also provides clarity on the qualifications and training advocates are expected to have. This is an area that will require detailed further consideration as it differs substantially from our current approach which has been to mainly use advocates in specified situations. It is also unclear at this stage whether the labour market could supply sufficient qualified advocates to meet the growth in demand that can be anticipated.

2.4. Transition Planning

2.4.1. Detailed Guidance is provided on how the transition from childhood to adult life should be managed for those with care and support needs and those likely to have Continuing Health Care needs. The Care Act contains provisions to help preparation for three particular groups: children and young people who have their own needs, young people who are carers, and carers of young people. It is explicit that for those young people who have an Education, Health and Care plan then transition planning should start in Year 9.

2.4.2. It should though be remembered (see report elsewhere on the agenda) that the system being introduced by the Children and Families Act will also be new albeit coming into force from September 2014. The guidance maintains the position that the services offered at 18 may be different to those available prior to 18 but seeks to ameliorate the concerns about a 'cliff edge' by providing sufficient information early enough to allow the young person and their family to plan ahead with confidence.

2.4.3. It is also explicit about the expectation of co-operation between professionals. It is to be expected that many young people and their families will wish to establish that the young adult has eligible needs at age 18 as this will determine their right to free care for the remainder of their adult life. If the adult social care assessment therefore differs substantially from the children's service assessment (even if services to prevent reduce or delay needs but not eligible needs are funded) then a high level of appeals might be expected particularly until case law establishes some legal precedents.

2.4.4. The detailed annexes to the Guidance make no reference to the Children and Families Act, referring to preceding legislation. It is clear that this is one area where we will need to undertake detailed work to map pathways and ensure that as an authority we have the right capacity in the right areas to ensure young adults who need services get the help and assistance they require.

2.5. Charging for services, Deferred Payments and Care Accounts

2.5.1. Much of the national publicity around the Care Act has focussed on the financial reforms arising from the Dilnot Report. However much of this does not take effect until April 2016 and as such will be the focus of the further guidance and regulations due to be issued this autumn. This will therefore be subject to a further report to the Board.

2.5.2. What has been clarified however is that the ability to levy charges for community-based services will remain a matter for local determination and will not become a nationally prescribed scheme in the way that residential care and nursing home charges are prescribed.

2.5.3. Work will now need to be undertaken to review our existing *Fairer Charging Policy* to take account not only of the Care Act but also the welfare reforms. This is a substantial piece of work to balance the need for individuals to make a contribution to the cost of their care with the wider needs of tax payers generally whilst complying with the guidance now issued; again this will need to be a matter for further detailed consideration as the Council sets its 2015-16 budget.

2.6. **Safeguarding**

2.6.1. As expected the regulations and guidance put the Safeguarding Adults Board on a Statutory footing, specifying that the lead agency is the local authority and setting out key duties to:

- Make enquiries if it believes an adult is being abused or at risk of abuse
- Set up a Safeguarding Adults Board
- Arrange where appropriate for an independent advocate
- Co-operate with each of its partners in order to protect adults experiencing or at risk of abuse

2.6.2. The guidance is clear that the inter-agency arrangements must be set up in such a way as to put people in control of their own lives and do not revert to paternalistic or interventionist ways of working. It also stresses that safeguarding is everyone's business and that there is the need to ensure that workers from a range of disciplines (for example: welfare, police, banking, trading standards, leisure, faith organisations, and housing) are engaged in safeguarding.

2.6.3. Safeguarding Adults Boards are charged with agreeing inter-agency procedures, publishing a strategic plan and increasing public awareness and vigilance. A more detailed report on these issues was considered by the Safeguarding Adults Board on 18 July 2014.

2.7. **Integration ,cooperation and partnerships**

2.7.1. Given this section is key to the functions of the Health and Wellbeing Board this chapter of the statutory guidance is reproduced in full at Appendix 3.

2.7.2. Whilst much of it is as may have been expected, stressing the need to integrate health and social care services at all levels, it nevertheless is prescriptive about what it expects in terms of the JSNA and the Joint Health and Wellbeing Strategy. In our case we have recently agreed a sector wide five year strategy which will clearly inform our thinking. We are due to review both the Health and Wellbeing Strategy and the JSNA over the coming months and can take account of these matters.

2.7.3. Changing operational practice in the ways envisaged in the guidance may be more challenging. More unexpected are the repeated references throughout the documents to the role of housing services. It should be less problematic for Barking and Dagenham as we are a unitary authority encompassing housing responsibilities than for other kinds of local authority. However it does raise some issues that will require separate consideration such as whether or not Housing should be explicitly represented on the Health and Wellbeing Board or the CCG Governing Body.

2.8. Market Shaping

2.8.1. The regulations and guidance make explicit the local authority's duty to 'shape' the local care market in order to ensure that there is sufficient diversity in provision to enable service users to exercise real choice. Whilst the Council will for some time to come continue to commission a range of services, increasingly those with Direct Payments will commission their own personalised services. Earlier this month the first Market Position Statement 'The Business of Care in Barking and Dagenham' was published setting out for care providers the likely direction of travel for the different care groups.

3. Implications

3.1. The extent of the regulations and the breadth of the statutory guidance, and bearing in mind there is another tranche to come in the autumn, is much further reaching than could have been anticipated from the wording of the Act itself and the parliamentary debate during the legislative process.

3.2. There are significant implications for policy, professional practice and costs arising from the detail and a very short timescale to make the necessary changes for the April 2015 phase. For instance, it is not yet clear whether or when our electronic records provider will be able to deliver all the necessary system changes and upgrades. Certainly our existing processes will require review and amendments to take into account the very specific 'customer journey' mapped out in the legislation.

3.3. It is also envisaged that considerable staff training will be required but again there is a relatively short window of opportunity between the finalisation of the regulations and guidance and implementation. At present our best estimate is that within the Council:

- key assessment staff and their managers are likely to need at least 10 days training in different modules;
- a further group of commissioners, some housing staff, finance staff and provider staff needing 3-5 days training;
- a much larger cohort of staff will need one day general awareness training.

To release these numbers of staff will in some instances require us to secure additional temporary staffing cover.² A further issue is the fact there are no training courses available in the market to provide the training, and Skills for Care are releasing online training modules which provide a superficial view of what is required. We are intending to employ our own dedicated trainer to design and deliver a bespoke training programme for our own staff. Additionally significant numbers of NHS staff will require training as well as staff in social care providers and voluntary sector organisations

3.4. There are a number of policy documents that we either do not currently have or which will require significant revision. Work for some areas is in hand for example in the Better Care Fund Reports we identified the need for a new Carer's Strategy and this is being developed but others such as a Prevention Strategy will need to be initiated.

² Potentially another 6 members of staff for a period of 6 months. This would cost in the region of £150k.

- 3.5. Most procedural documents will require revision. In some instances such as Safeguarding Procedures these were developed previously on an inter-agency pan-London basis and we would expect that to be the case again.
- 3.6. The new requirements to put substantially more information in a personalised written format will mean that we need to review all the forms and letters we use. Wherever possible we will seek to automate the production of user friendly communications but the short lead-in time may mean that a two phased approach is required
- 3.7. Local authorities have been lobbying for the Department of Health to lead a major public information campaign to support the implementation of the Care Act. There now seems to be agreement that they will produce national TV and poster campaigns along the scale of Change4life or some of the HMRC campaigns as well as producing materials that can be adapted for local use.

4. Mandatory Implications

4.1. Joint Strategic Needs Assessment

The new requirements will need to be reflected in the refresh of the JSNA (See paragraph 2.7.2)

4.2. Health and Wellbeing Strategy

The new requirements will need to be reflected in the refresh of the Health and wellbeing Strategy (See paragraph 2.7.2).

4.3. Integration

The Care Act drives forward the Government's policy intention that further service integration should follow. Helpfully it puts the duty to co-operate on a statutory basis in a number of areas.

4.4. Financial Implications

- 4.4.1. The Department of Health has already announced a number of funding streams to support the implementation of the Care Act in 2014/15 and 2015/16, but not yet for 2016/17.

2014/15

Every authority with adult social care responsibilities has been awarded £125k as a Care Act Implementation Grant. The purpose of the grant is to provide additional support to local authorities in England towards expenditure lawfully incurred or to be incurred by them. The table overleaf sets out how this funding is proposed to be spent within Barking and Dagenham. If additional resources are needed, a further report will be presented at a later date unless these can be agreed by the Corporate Director in consultation with the Chief Financial Officer.

Care Act implementation Grant: Proposed Spend	Amount
Project officer costs	£40,000
Additional legal capacity	£15,000
Consultation events with 3 rd sector, service users and carers	15,000
Organisational development – training, briefing, e-learning development	15,000
Systems development – information and advice, assessment, and financial assessment	40,000
Total	125,000

4.4.2. In addition, the Better Care Fund plan, agreed by the Health and Wellbeing Board earlier in the year, included £100k of on-going funding for the costs of meeting statutory costs of safeguarding adults requirements; this is funded from the increased Adult Social Care grant in 2014/15 and CCG revenue funding from 2015/16.

2015/16

4.4.3. A New Burdens Grant of £1,084k has been allocated by the Department of Health to Barking and Dagenham in respect of costs of the Care Act arising for the changes coming into effect from April 2015. The grant is to be used for early assessments and reviews, deferred payments, capacity building including recruitment and training of staff, and an information campaign. Proposals on how to allocate the total grant will be presented to the Health and Wellbeing Board later in the year when regulations and guidance are published in their final form.

4.4.4. Within the Better Care Fund plan, £200k of the local authority adult social care capital grant has been earmarked for any potential costs of computer system changes which need to be implemented as a result of the Care Act.

4.4.5. Funding of £135m at national level is included in the Better Care Fund but the local allocation of £500k has yet to be agreed locally; progress in reaching agreement is to be reported back to the September meeting of the Health and Wellbeing Board. Recent announcements on the operation of the Better Care Fund raise some concerns that funding from the CCG may not be available towards meeting certain costs listed below, which may therefore add to financial pressures for the local authority.

4.4.6. The activities deemed by the Department of Health to be funded at national level from the Better Care Fund as a result of the Care Act are:

Personalisation

- Create greater incentives for employment for disabled adults in residential care

Carers

- Put carers on a par with users for assessment.
- Introduce a new duty to provide support for carers

Information advice and support

- Link local authority information portals to national portal
- Advice and support to access and plan care, including rights to advocacy

Quality

- Provider quality profiles

Safeguarding

- Implement statutory Safeguarding Adults Boards

Assessment and eligibility

- Set a national minimum eligibility threshold at substantial
- Ensure councils provide continuity of care for people moving into their areas until reassessment
- Clarify responsibility for assessment and provision of social care in prisons

Veterans

- Disregard of armed forces Guaranteed Income Payments from financial assessment

Law reform

- Training social care staff in the new legal framework

2016/17

- 4.4.7. The major financial impact of the Care Act will begin in 2015/16 as a result of the extended means test, the capped charging system and the introduction of Care accounts. Draft guidance and regulations on these aspects of the Care Act are expected to be published in the autumn.
- 4.4.8. The Department of Health is re-evaluating the likely financial impact of the April 2016 changes at national level; announcements on the total funding to be made available are likely to be made as part of the provisional local government finance settlement for 2015/16, expected in December 2014. This may include allocations to be made to individual local authorities, and the payment mechanism, e.g. whether or not additional funding will be made available as a ring-fenced specific grant.
- 4.4.9. In addition, the local authority is working up its own financial modelling in order to inform the budget process. Further information is needed on the potential numbers of people looking to the authority for financial support who would be self-funding their care under current arrangements, and on the numbers of informal carers who will have strengthened rights to their own assessment and allocation of resources to meet their needs to enable them to carry out their caring role. Given the uncertainties the Chief Financial Officer will consider at a later stage whether it is appropriate for some funding to be retained within the general contingency.

Implications completed by: Roger Hampson, Group Manager, Finance

4.5. Legal Implications

- 4.5.1. The Care Act will bring in a sea change for Adult Services and the way in which services to the population is to be delivered. The principles underpinning the statute are the wellbeing principles and the prevent/reduce/delay principle, which places duties on staff other than social care staff. Because of these changes in some cases staff across the authority will need to be trained in concepts entirely unfamiliar to them. Staffing implications are alluded to throughout the report and specifically mentioned at paragraph 5.2.
- 4.5.2. Further to section 2.1, it is noteworthy that Information and Advice duties go beyond mere signposting. Staff will have to confirm outcomes and decisions in writing and it is suggested that there are template letters, which can be adapted to particular situations to fit with the personalised approach. Independent Advocacy is going to be arranged for those with capacity as well as those without capacity.
- 4.5.3. Safeguarding (see also paragraph 5.1) has now been placed on a statutory footing and a gap analysis has been undertaken to ascertain where the authority is at present and where it needs to be by April 2015.
- 4.5.4. There is no mention of the new appeals process pursuant to s.72 of the Act. This will divert challenges from the High Court – Judicial Review, which will lessen the financial burden of defending these challenges. The Act states that Regulations will set out the process and procedure for Appeals but no regulations have been issued in relation to the appeal process.

Implications completed by: Dawn Pelle, Adult Care Lawyer

4.6. Risk Management

The scale, complexity and pace of the Care Act implementation present considerable risk to the Council, and to a lesser extent partners. Risks and mitigation actions have oversight at all levels and are monitored systematically and with regularity. The Care Act implementation programme has its own risk log to capture and manage risks. The identified risks are also being monitored on the ACS departmental risk register and the delivery of the Care Act is flagged on the corporate risk register.

The risks related to the programme centre around the short time period in which to adapt to major reform and the challenges this brings for systems and workforce development.

5. Non-mandatory Implications

5.1. Safeguarding

The proposals will strengthen the role and functions of the Safeguarding Adults Board and clearly define the way in which practitioners should work with adults at risk, stressing the need to ascertain the individual's views and wishes, and to seek their consent. They also cover the responsibilities of the care sector employers.

5.2. Staffing issues

The changes the Care Act will bring into force will require service redesign in a number of areas which may well result in changes to job roles and organisational structures. Normal staff consultation processes would need to apply as soon as the

detail is available. At this stage it is not possible to quantify the number of posts affected.

However, what is clear is that the role changes will affect not only social care staff but also other local authority staff (such as housing officers) and staff from a range of other organisations (particularly the NHS) where multi-disciplinary team working is the norm. Substantial training will be required for significant numbers of staff in order to effectively implement the legislative change. Work is underway to identify those who will require training and establish modular programmes.

6. Background Papers Used in Preparation of the Report:

- Health and Wellbeing Board reports (05 November 2013 and 10 December 2013)
- Secondary Legislation: Draft regulations for consultation - Part One of the Care Act 2014 (Department of Health, June 2014)
- Care and Support Statutory Guidance (Department of Health, June 2014)
- Care Act, Part One: Factsheets 1-11 (Department of Health, June 2014)
- The Care Act 2014 and Safeguarding Provisions (Safeguarding Adults Board, 18 July 2014)
- 'The Business of Care': Adult Social Care Market Position Statement 2014-2016 (LBBB, July 2014)

7. List of appendices

- Appendix 1: Summary of the provisions of the Act
- Appendix 2: Draft consultation response on the statutory guidance and regulations
- Appendix 3: Statutory guidance on integration, co-operation and partnerships