

# HEALTH AND WELLBEING BOARD

29 JULY 2014

<b>Title:</b>	<b>Children and Families Act Briefing</b>
<b>Report of the Corporate Director of Children's 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> Helen Jenner, Corporate Director of Children's Services	
<b>Summary:</b> <p>The Children and Families Act became law in March of this year. The Act, and the code which is statutory guidance, has significant service delivery implications for all partners - health, education, social care and adult services.</p> <p>The Act introduces the new 'Special educational needs and disability code of practice 0-25 years' replacing the existing SEN Code of Practice as from 1 September of this year. This has the status of statutory guidance.</p> <p>Work on the Local Offer and Education Health and Care Planning is on course and ready for 1 September. Our community engagement for the Local Offer has become an exemplar of good practice, on the recommendation of the DfE.</p> <p>Our Education, Health and Care Plans have been developed in partnership with parents and are being trialled. A training programme to support staff with implementation is underway. Work in relation to transition to adulthood and joint commissioning is still to be taken further forward.</p> <p>This report provides Health &amp; Wellbeing Board members with an overview of progress on implementation and further detail on the implications of the Act and its supporting statutory guidance.</p>	
<b>Recommendation(s)</b>	
The Health and Wellbeing Board is recommended to:	
(i) Agree support for compliance with the Children and Families Act and the current draft version of the 'special educational needs and disability code of practice 0-25 years' which we are directed by the DfE to use as statutory guidance.	
(ii) Note the statutory duties which require full implementation by 1 September 2014 and consider their implications for strategic and commissioning decisions.	
(iii) Note that the statutory guidance requires that:	
"Joint commissioning should be informed by a clear assessment of local	

needs. Health and Wellbeing Boards are required to develop Joint Strategic Needs Assessments and Joint Health and Wellbeing Strategies, to support prevention, identification, assessment and early intervention and a joined-up approach”

And to further note that the refresh of the Joint Strategic Needs Assessment is currently underway and should be expected to take account of this requirement, in preparation for a future refresh of the Health & Wellbeing Strategy.

- (iv) Note that structured programmes are in place for implementation of both the Children and Families Act and the Care Act, which will consider the implications of the new guidance for the overlap between Care Act and Children & Families Act requirements. Irrespective of any discrepancies identified, there remains a statutory duty to put the arrangements described in the Children and Families Act in to place by 1 September.

### Reason(s)

1. Local authorities and health partners have a statutory duty to implement the Children and families Act from 1 September 2014. The DfE has directed local authorities, health and other partners to use the ‘special educational needs and disability code of practice 0-25 years’ as statutory guidance for this Act. Although it is still in draft form there is a clear directive to follow this. The DfE has monitored progress of this work across all local authorities and will continue to do so to make sure that there is statutory compliance.
2. There are also good practice recommendations in this guidance to improve outcomes for children and young people.
3. The Children and Families Act sets out duties on Health and Wellbeing Boards in relation to children and young people with specialist educational needs and disability.

## 1. Background

- 1.1 As the Children and Families Act has been through Parliament, there have been two revised versions since October 2013. The April 2014 version brought in significant changes:
- A greater focus on children and young people with disability within the text. The Code is now the ‘special educational needs **and disability** code of practice 0-25 years’.
  - The legal duties in the code have now been clarified to reflect the distinction between statutory and non statutory duties, in particular, in relation to
    - schools’ duties,
    - joint commissioning
    - local authority duties to support young people over 18.
  - There is stronger accountability on schools to support pupils without Education, Health and Care Plans and on local authorities in relation to the Local Offer.

- There is greater focus on a) disabled children and b) transition to adulthood, in particular, post-16 arrangements.
- More explicit involvement of children, young people and their parents in the design of services.
- New chapters have been added to separate out information for early years, schools and post-16 practitioners and on preparation for adulthood. (source: NASEN).

1.2 The June version adds further clarification in relation to mediation arrangements.

1.3 There has been significant work within Children's Services and with partners to get ready. This has covered a number of areas which are statutory duties:

- The duty to publish the Local Offer.
- The duty to engage with the community.
- The duty to establish information, advice and support for parents and young people
- The duty to replace statements with Education, Health and Care Plans
- The duty to prepare children and young people for adulthood and set out arrangements for transition to adulthood
- The duty to work together with health and other partners.

## **2. Achievements to date**

For the duties listed above, progress is described below.

### **2.1 The duty to publish the Local Offer**

This is on course. The interactive website is due to go live before September 1st. The section on preparing for adulthood is still underway. The partnership work with our young people and our parent's forum (Just Say) in order to produce the Local Offer has forged closer community links.

### **2.2 The duty to engage with the community**

Our engagement with the local community to develop the local offer is now a national example of good practice. Consequently, Barking and Dagenham have been invited to work with the DfE and champion pathfinders on disseminating good practice to other local authorities.

### **2.3 The duty to establish information, advice and support for parents and young people**

This is also underway. Parent Partnership will be re-commissioned. We have been working with our Parent's Forum to input the parent voice into the specifications and quality assure the bids. Our young people's Progress Project have given feedback on how they would like this delivered—This work is ongoing.

## **2.4 The duty to replace statements with Education, Health and Care Plans**

We have conducted pilots to trial our EHC template and process. We are now at a stage where this is being rolled out to schools so that they are ready to implement from September. There will also be training to social care.

The statutory assessment team within Children's Services is being realigned in readiness to meet the new approach to assessment and review.

## **2.5 The duty to prepare children and young people for adulthood and set out arrangements for transition to adulthood**

This work is ongoing. There is a statutory duty to have arrangements in place for the September deadline. Although these can be reviewed at a later date in the light of development of the Care Act following consultation, we have to have arrangements ready for September 1st.

## **2.6 The duty to work together with health and other partners**

The work to establish joint commissioning protocols with health partners is underway.

## **3. Consultation**

- 3.1 There has been consultation with parents, children and young people. We have developed a close partnership with our Young People's Progress Forum and Just Say Parents' Forum. An Equality Impact Assessment has been undertaken. As referred to above, the community engagement in relation to producing our Local Offer has been published as an example of good practice, to support other local authorities.

## **4. Challenges and Gaps**

- 4.1 A number of challenges and gaps are currently being worked on. We are establishing robust ways of working across Health and Local Authority Services that takes account of both the Children and Families Act and the Care Act that complies with statutory requirements to be ready for September 1st (Children and Families Act). There are plans to later realign to match the Care Act which may be amended as a result of the current consultation (April 1<sup>st</sup> 2015). The 'special educational needs and disability code of practice 0-25 years', provides statutory guidance to the Children and Families Act. It refers to duties that local authorities have under the Care Act, which are to work to promote the integration of adult care and support with health services. We must ensure:

- the provision of preventative services
- the diversity and quality of care and support services for adults
- provision of information and advice on care and support locally.

- 4.2 The Care Act (and associated regulations and guidance) sets out requirements on local authorities when young people approach or turn 18 and are likely to require an assessment for adult care and support:

- Local authorities must continue to provide children's services until adult provision has started or a decision is made that the young person's needs do not meet the eligibility criteria for adult social care. (Children's services must not be discontinued simply because a young person has reached their 18th birthday).
- Local authorities and their partners must cooperate in the provision of adult care and support.
- Consider the provision of resources that prevent, delay or reduce the need for care for those who require support but do not have eligible needs under the Care Act 2014.

4.3 Local authorities and their partners should therefore work together to ensure:

- effective and well supported transition arrangements are in place;
- assessment and review processes for both Care plans and Education, Health and Care (EHC) Plans are aligned;
- there is effective integration with health services  
(See Appendix 3: The Children and Families Act references to the Care Act).

4.4 It is important therefore that children's and adult services, along with health partners, determine what these duties will look like in relation to service provision for 1 September 2014. Although there needs to be greater clarification between the Children and Families Act and the Care Act, it is clear that the Children and Families Act is to be implemented on 1 September.

4.5 Whilst the Joint Strategic Needs Assessment includes a profile of the needs of children and young people with SEN and disability, a particular emphasis may need to be placed on this through the refresh which is currently underway, to ensure that it will deliver the influence on local commissioning that is envisaged by the guidance. This would then inform and develop further joint work between partners, to ensure robust forecasting and understanding of risk, and to support services to be needs-led rather than demand led.

4.6 It is important that the community is aware that we are working with a limited cash envelope. The close engagement with community partners has to an extent mitigated this risk and provided refreshing input to ensure the focus is on value for money in relation to meeting the needs of children and young people to support positive outcomes. The Local Offer will help to empower parents by helping them know what is available at universal and targeted service level and establish clear expectations, and clarify eligibility for specialist services. This will also provide a robust audit tool for providers to ensure that earlier levels of intervention and support are robust.

4.7 This report is part of efforts to ensure that all partners fully understand the implications of the Act for future work. However, capacity issues have meant that the level of engagement in the developments has varied across agencies. In particular there is additional work needed to secure some aspects of health engagement, but it is to be noted that new appointments have been made to support this work. There is still significant awareness raising to be done with GPs and others and joint commissioning is underdeveloped currently.

## **5. Specific Recommendations to be considered linking the Care Act and the Children and Families Act**

### **5.1 Outcomes and Wellbeing**

- Develop a shared vision for preparing for adulthood with young people 14-25. (co-production, in both Children and Families Act and Care Act). This work has begun with the Young People's Progress project.
- Develop capacity and competency in outcome focused support planning across children's and adults' services.
- Develop common core of person-centred skills for Education, Health and Care Plans, and Child's Needs Assessments. (A shared training programme will support more seamless service delivery and may also lead to financial efficiencies).
- Develop a 'lifespan' approach to outcomes—so that professionals at each stage understand their role and responsibilities and how they relate to other stages of a young person's preparation for adulthood.

### **5.2 Assessment and Planning: Align EHC and CNA Planning**

- Ensure that the care element of the EHC planning process is aligned to the Adults' Needs Assessment for Care and Support for young people post-18.
- Ensure close liaison between professionals involved with CNA (Child Needs Assessments) and EHC planning.
- Adult social care input into year 9 (transition) review of a young person so that young people and families receive information on how to request a CNA.
- Develop clear processes so that both EHC and CNA plans produce indicative personal budgets.

### **5.3 Joint Commissioning**

- As part of the refresh of the JSNA and the development of commissioning strategies, ensure that children, young people and their families are engaged in partnership ('co-production') to inform plans, and that they are drawing on information on EHC plans and the Local Offer.
- Develop a process to allow the information from EHC Plans, CNAs and personal budget holders' choices, to inform the joint commissioning strategy.
- Ensure that work streams to develop joint commissioning across the 0-25 age group and the Better Care Fund are joined up, and that a common process is developed.
- Ensure that work on market development takes account of intended outcomes of the Children and Families Act and Care Act.
- Explore how personal budgets across education, health and social care (and personal health budgets) can be integrated to develop post-16 options and support that lead to better outcomes for young people.
- Ensure that young people and their families have access to good information, advice and support in relation to what is available and to purchase it.

- Provide young people and their families with better opportunities to pool budgets and commission mutually beneficial support.

#### 5.4 Information, Advice and Support

- Consider establishing a joint information and advice offer across all age groups, or the 0-25 age group.
- Ensure that professionals responsible for developing the Information and Advice Service (Care Act) work closely with those developing the Partnership and young people's information service.

## 6. Mandatory Implications

### 6.1 Joint Strategic Needs Assessment

The Council and our health partners monitor the changing needs of children and young people with SEN and disability and assess whether or not the available provision is improving their outcomes. The SEND code emphasises the need for this process of assessing need, provision and identifying outcomes to be linked to the existing JSNA carried out by the Health and Wellbeing Board and make full use of the available local data. Children and young people who have a Special Education Need and/or Disability have a diverse range of health needs, which include children and young people with long term health conditions, children and young people with autism and children and young people with sensory impairments and children and young people with mental health issues. It will also include children and young people with multiple and complex needs who may be dependent on technology, children and young people with behaviour that challenges and children and young people with a life-threatening or life-limiting condition. Meeting these health needs will often require a range of different NHS services, provided by different professionals which often cut across organisational boundaries. Children with SEN and disability are therefore disproportionately disadvantaged by a system that does not integrate services, support them to make decisions about their own care or adequately support them during the transition to adult services. The Local Offer will need to build on the JSNA and the analysis of local SEN and disability needs. As well as providing information about the services that the Council expects to be available the Local Offer should also perform an important function as a tool to improve provision by setting out how services will meet local need and achieve the outcomes set out by the joint commissioning arrangements.

### 6.2 Health and Wellbeing Strategy

The Children and Families Act 2014 has major implications for how the NHS organises and delivers services to children and young people who have a Special Education Need and/or Disability between the ages of 0 and 25. It will reform the system of support across education, health and social care to ensure that services are organised with the needs and preferences of the child and their family firmly at the centre, from birth to the transition to adulthood. The refresh of our Joint Health and Wellbeing Strategy being undertaken this year provides an opportunity for local partners to think about how they can work together to achieve their existing outcomes. This may include how joint commissioning for SEN and disability can help partners meet goals in the Joint Health and Wellbeing Strategy, objectives in the NHS Mandate, or indicators in the NHS Outcomes Framework, the Public Health Outcomes Framework, or the CCG Commissioning Outcome Indicator Set.

### **6.3 Integration**

Integration is at the heart of the Children and Families Act and the Act will require robust multi-agency working. For example, the legislation sets out the need to promote integration around educational provision and training provision with health care provision and social care provision. The Children and Families Act also places a duty on the local authority and partner commissioning bodies to make joint commissioning arrangements around education, health and care provision for children and young people for whom the local authority is responsible who have special educational needs and children and young people in the local authority's area who have a disability.

### **6.4 Financial Implications**

There are resources in the form of a one-off Special Educational Needs (SEN) Reform Grant 2014-15 from the Department for Education (DfE) totalling £425,304. The grant is to provide support for expenditure lawfully incurred to recognise the programmes of change underway in the areas of SEN, however local authorities can spend this grant in order to best meet the local need.

The Children and Families Bill will transform the lives of children and young people with SEN. It will improve outcomes for children and young people with SEN; increase choice and control for parents; and promote a less adversarial system. We are currently undertaking a range of reforms to prepare for these changes including personalisation that includes personal budgets. The details of these will be included in the EHC plans that are currently being piloted and resources will be within the current funding envelope.

Implications completed by: Patricia Harvey, Interim Group Manager, Children's Services

### **6.5 Legal Implications**

Local Authorities must publish a 'local offer' showing the support available to disabled children and young people and those with special educational needs and their carers, and introduce mediation for disputes with a right to appeal for those unhappy with their support.

Under the Care Act 2014, young people have the right to request transition assessments for adult care that will enable them to see whether they are likely to have eligible needs that will be met by adult services once they turn 18. The Care Act 2014 came into force on 15 May 2014.

The body of the report outlines the key achievements and challenges. The Board is specifically asked to agree to support the statutory duties arising from the Children Act 2014 baring in mind that provisions are also reflected in the Care Act 2014 and to consider how it shall jointly commission assessment and intervention services.

The legal implications of this are outlined in the Code of Practice:



Publication: Local authorities are required to consult with parents and young people with SEN when setting up their local offer. It is expected that parent carer forums will play a key role in doing this. Parent carer forums are groups of parents of children with SEN and disabilities who work with local service providers to ensure the needs of children with SEN and disabilities are met. Under the Code, the Local Authority must publish and keep under review its Local Offer of provision in consultation with children, their parents and young people. This will mean that Local authorities will publish all comments they receive via the Local Offer, together with their response including details of what they will do. The comments received will be used by the local authority and their health partners to understand local needs and to identify gaps in services, in order to make changes.

- Co-operation: Local authorities must keep their educational and training provision and social care provision for children and young people with SEN or disabilities under review (. In carrying out this duty, the local authority will gather information from early years providers, schools and post-16 institutions. In most cases, these institutions must, in turn, co-operate.
- Joint commissioning: The Children and Families Act creates a new duty on local authorities and health bodies to jointly commission services across education, health and care. The Care Act includes general duties on local authorities to promote integration and on local authorities and “relevant partners” (including the NHS) to cooperate generally and in relation to individuals. ‘Joint commissioning that encompasses the transition to adult services will need to involve a wider range of partners, such as housing and employment support. The Care Act also provides the legislative framework for the Better Care Fund, which includes existing NHS, and social care funding, that will now be jointly invested.’  
([https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/270417/Factsheet\\_19\\_Better\\_Care\\_Fund.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/270417/Factsheet_19_Better_Care_Fund.pdf))
- Lawful decision making: Both the Children and Families Act and the Care Act promote better choice and control over care and support for young people and families. The Board has duties in relation to disabled children and young people under the Equality Act 2010 in its’ decision making not to discriminate, to make reasonable adjustments for disabled children and young people and to promote equality of opportunity.

Implications completed by: Alison Stuart, Principal Solicitor, LBBD

## **6.6 Risk Management**

There has been work underway to ensure that the statutory assessment team is realigned to deliver Education, Health and Care Plans. There is risk in relation to team capacity and skills in readiness for 1 September.

There is an urgent need to identify where responsibility for carrying out Education, health and care assessments sits for 19-25 year olds, -- either in Children’s or Adult’s Services. The skills and capacity do not at this time sit within Children’s Services and this could be an opportunity to ensure a wider range of skills are used to develop personalised, holistic assessment.

## **6.7 Patient/Service User Impact**

This work will improve outcomes for children and young people with special educational needs and disability, and support to their families, by ensuring a more holistic approach to meeting needs.

### **Background Papers Used in Preparation of the Report:**

1. Children and Families Act (2014)
2. Special educational needs code of practice 0-25 years' (June draft)
3. NASEN response to the consultation on the special educational needs and disability code of practice 0-25 years.
4. Preparing for Adulthood Factsheet: The links between the Children and Families Act and the Care Act.

### **List of Appendices:**

- Appendix 1. Children and Families Act – detailed information
- Appendix 2. Barking and Dagenham's Case Study snapshot - The Local Offer.

### **Useful Links:**

1. Barking and Dagenham Case Study:  
<http://www.sendpathfinder.co.uk/infopacks/lo/>
2. Young People's Progress Forum film:  
<http://www.youtube.com/watch?v=CYshV85EBEY>