

## CABINET

16 February 2015

<b>Title:</b> The Care Act 2014	
<b>Report of the Cabinet Member for Adult Social Care and Health</b>	
<b>Open Report</b>	<b>For Information</b>
<b>Wards Affected:</b> All	<b>Key Decision:</b> No
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<b>Summary</b> <p>The Care Act 2014 is of considerable scale and impact and is the biggest package of reforms to adult social care in the last 60 years.</p> <p>This report explains the rationale behind the reforms, gives an overview of the thrust of the Act and its main provisions, highlights the impact of the Care Act for the Council and our partners, and outlines our approach to implementation. The report also spells out implications for areas of corporate policy and the latest financial position.</p>	
<b>Recommendation(s)</b> <p>The Cabinet is recommended to note the impacts of the Care Act 2014 on the Council.</p>	
<b>Reason(s)</b> <p>The Care Act 2014 imposes significant legislative change on the Council and requires major changes to both policy and service delivery.</p>	

### 1. Background and context

1.1. The Care Act 2014 is the most comprehensive overhaul of social care since 1948, it consolidates and modernises all social care law into a single framework replacing a fragmented catalogue of legislation that was developed somewhat piecemeal. When the Care Act becomes operational from 01 April 2015 the following pieces of primary legislation will be repealed or disapplied:

- National Assistance Act 1948
- Health Services and Public Health Act 1968
- Local Authority Social Services Act 1970
- Chronically Sick and Disabled Persons Act 1970

- Health and Social Services and Social Security Adjudications Act 1983
- Disabled Persons (Services, Consultation and Representation) Act 1986
- National Health Service and Community Care Act 1990
- Carers (Recognition and Services) Act 1995
- Carers and Disabled Children Act 2000
- Health and Social Care Act 2001
- Community Care (Delayed Discharges etc.) Act 2003
- Carers (Equal Opportunities) Act 2004
- National Health Service Act 2006<sup>1</sup>

1.2. As well as consolidating the legislation, the Care Act 2014 seeks to bring social care law into the 21<sup>st</sup> Century. The Act enshrines in legislation and statutory guidance modern adult social care policy and practice. There is a new focus and direction for social care which centres on prevention, wellbeing, and personalisation. The main provisions of the Act are summarised in section 2 of this report.

1.3. The Care Act 2014 builds upon the Health and Social Care Act 2012 with the intention to strengthen integration between health and adult social care. It also responds to recent scandals such as Winterbourne View, the failures of Mid-Staffordshire NHS Trust, and the collapse of Southern Cross (a major provider of residential and nursing care) to which new duties regarding safeguarding vulnerable adults, raising care quality standards, and managing provider failure relate.

1.4. The Care Act 2014 also takes up the recommendations of the Dilnot Commission (2011) which proposed to help people with modest wealth and end unlimited care costs by putting in place a cap on the amount a person will pay for care in their lifetime. To achieve this, a package of funding reforms will come into effect from April 2016. Further information about these is set out in section 3 of this report.

1.5. Part one of the Care Act 2014, which covers care and support law, comprises 80 sections of primary legislation. In addition, 23 sets of regulations (secondary legislation) provide further definitions, explanatory notes, criteria, and legal duties which must be followed or applied in implementing the Care Act 2014. Further, the statutory guidance which accompanies part one of the Act consists of more than 400 pages of in-depth detail to implement the law and 9 technical annexes that describe specific processes, charges, or rules.

1.6. The statutory guidance was only finalised in late October 2014 leaving local authorities a very short period of time to implement a large package of reforms. With the majority of part one of the Act becoming operational from 01 April 2015 implementation is not only demanding and challenging.

## **2. Main provisions of the Care Act (April 2015 changes)**

2.1. The Act introduces a number of new concepts into legislation as well as imposing new statutory duties and extending others.

2.2. At the heart of this legislation is a general duty on the Council to promote integration with health services and health related services. A key mechanism for achieving this is through the Better Care Fund (BCF). Our local plans for the BCF were agreed at

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<sup>1</sup> As set out in Annex I of the Care and Support Statutory Guidance

the Health and Wellbeing Board on 09 September 2014 and have now achieved full approval at a national level.

- 2.3. The Act also introduces the concept of 'wellbeing' and requires councils to have regard to this in designing and arranging all services – not only adult social care services. Alongside a requirement to prevent, reduce or delay the need for more intensive care services.
- 2.4. A wide range of changes are being made as to how individuals will access care and support and what local authorities are expected to do in terms of supporting residents. A new national eligibility criteria is introduced together with detailed requirements on how decisions are made and communicated. All individuals and carers will have the right to a personal budget. Attached at Appendix 1 is a summary of how the Care Act 2014 will affect individual residents.
- 2.5. The Act will put the Safeguarding Adults Board on a statutory footing and for the first time enshrines in legislation a duty for partner agencies to co-operate with the local authority (see also paragraph 4.6).
- 2.6. Whilst the main funding reforms will not come into force until April 2016 there are some financial matters that must be addressed this year. Elsewhere on this agenda are detailed reports on deferred payment agreements and a revised charging policy.
- 2.7. Another new area of legislation places responsibilities on local authorities to work with regulators and large providers of care and support to prevent business failure. Where there is a threat of business failure care; support providers must share commercial information with the Council and regulators so that plans can be made for continuing the care of their residents. In the event of provider failure Councils will have a temporary duty to meet the needs of individuals receiving care from that provider, this duty applies regardless of the person's needs, status or ordinary residence.

### **3. Changes from April 2016**

The Care Act 2014 responds directly to the Dilnot Commission (2011) which concluded that social care funding was unfair and unsustainable. From April 2016 the Act will introduce the following funding reforms:

#### **3.1. Cap on care costs**

- 3.1.1. Over a number of years campaigners have agreed that it is unreasonable that those people who have saved throughout their lifetime may find themselves having to use all their accumulated savings to pay for care and support. The Government have accepted this view and plan to introduce a cap on care costs; whilst at the same time introducing the concept that everyone should meet their own costs for accommodation and board.
- 3.1.2. The BBC has produced a care cost calculator which provides an indication of how this might work for individuals. <http://www.bbc.co.uk/news/health-30990913>
- 3.1.3. The introduction of the cap on care costs and changes to financial thresholds will have major implications for individuals that currently pay for their care and support.

3.1.4. The primary legislation gives a high-level description of the funding reforms however the draft statutory guidance on these areas of the Care Act 2014 has not yet been issued to local authorities. We expect consultation on the draft statutory guidance to begin shortly. Until such time we have limited information on the detail of the funding reforms and their implications for the Council. This will be subject to a later report to Cabinet.

### 3.2. Appeals

3.2.1. From April 2016 appeals may be made against decisions taken by a local authority in respect of individuals' care and support. It will therefore be essential that needs assessment outcomes and eligibility determinations are sufficiently robust. Developing staff knowledge and application of the new assessment processes and eligibility criteria is key to avoid appeals once the mechanism is introduced.

3.2.2. As with the funding reforms the Department of Health has not yet issued the draft statutory guidance, this again means that we have limited information about what the appeals mechanism will cover and how the system will work.

## 4. Implications for the Council

Whilst the Care Act 2014 is principally focussed on adult social care functions there are implications for other directorates and service areas in meeting the duties and requirements of the legislation. The impacts across the authority are summarised below:

### 4.1. Workforce training and development

4.1.1. Because the new legislative changes are far more prescriptive about the assessment and care planning processes there are significant implications for council staff will need training and development to perform their roles in compliance with the law and in accordance with new approaches, processes, and in some cases IT systems.

4.1.2. A thorough needs analysis of training and development needs has been completed and this has led to the development of a three tier approach.

- **Tier 1** has already been delivered and comprised of briefings and activities to raise awareness of the changes giving an overview of the Act and its main provisions.
- **Tier 2** is designed to target the wider workforce focussing on changes to roles and responsibilities, the development of new local procedures, and changes to the adult social care pathway. This tier involves holding workshops on key subject matters (e.g. assessment, eligibility and care planning) and more specialist sessions for staff groups with unique roles.
- **Tier 3** is designed to test and refine learning from previous tiers and to road test newly developed processes and procedures. Learning will be through a rigorous simulation approach to identify and address issues as well as reinforce learning.

4.1.3. The Workforce Development Programme covers over **280 staff** across directorates including Housing, Children's, Legal, Finance, and staff from integrated teams and the NHS. We are also targeting 100 delegates from local providers in order to develop knowledge within the local care and support sector.

## 4.2. Housing

4.2.1. Housing plays a key role in the health and wellbeing of an individual, or households, in a number of ways. Homes that are well built, safe, warm and affordable, in attractive neighbourhoods and settings, are cornerstones to the physical and mental wellbeing of people. Decent and suitable accommodation can also be an important factor which enables and allows engagement in work, training and education as well as family and social relationships. Adaptations and modifications as well as housing related support services are also critical in enabling people to live as independently as possible whilst retaining control over their own lives.

4.2.2. The Care Act 2014 places great prominence upon housing services and states that the provision of suitable accommodation is an integral element of care and support. Suitability of living accommodation is defined by the Act as one of the principles of wellbeing and is one of the matters which must be taken into account as part of the duty on a local authority to promote wellbeing. Housing also has a central role to play in prevention, safeguarding, and in working in an integrated and cooperative environment.

## 4.3. Children's Services

4.3.1. The Care Act 2014 impacts on Children's Services in four key areas related to transitions of young people into the adult social care system. Those four areas are:

- Outcomes and wellbeing
- Assessment and planning
- Joint commissioning and personal budgets
- Information and advice

4.3.2. The work to align the transitions duties/requirements in the Care Act 2014 with complementary duties in the Children and Families Act 2014 is being taken forward through the Council's Transitions Strategy Group. Key pieces of work in this programme include:

- Developing capacity and competency in outcome focused support planning across children's and adults' services.
- Ensuring that the process for adults' needs assessment and care and Support plan for young people post-18 are aligned to the assessment and planning process for the care element of an Education and Healthcare Plan.
- Ensuring more effective use of personal budgets (from age 16) that lead to better outcomes for young people moving into adult service provision.
- Producing an indicative personal budget for adult care and support as part of the children's needs assessment.
- Ensuring there is a strategic approach to developing good information and advice for young people moving into adulthood.

- Strengthening the Local Offer by developing the provision of information and advice for disabled young people (aged 18-25) and those with special educational need and their families.

#### **4.4. IT development**

- 4.4.1. The range of legislative changes have significant IT implications which given the very short lead-in times are proving challenging for all IT system suppliers. Another round of changes will be required for 2016 and may also have short lead-in times. It should be noted that these changes impact not only on our electronic social care record system but also have implications for our web presence, financial systems and online applications.
- 4.4.2. Our current social care record system IT contract runs to April 2017. Officers are therefore now reviewing its ability to meet the future needs of both adult and children's social care.

#### **4.5. Policy changes**

- 4.5.1. The Care Act 2014 has required the Council to review its policies and practice in a number of areas to ensure compliance with the new legislative requirements. In addition to the two reports elsewhere on this agenda there have been previous reports to the Health and Wellbeing Board (see background papers at paragraph 12).
- 4.5.2. In March 2015 the Health and Wellbeing Board will consider reports as to how the Council will discharge its responsibilities to improve information and advice on care and support to local people. It will also consider a report proposing a revised Carers' Strategy.
- 4.5.3. Later, in May 2015, the Health and Wellbeing Board will be asked to consider not only the revised Health and Wellbeing Strategy but also a new strategy setting out the Authority's approach to the new prevention duty.

#### **4.6. Safeguarding**

- 4.6.1. The Care Act 2014 places Safeguarding Adults Boards (SAB) on a statutory footing. In light of this the SAB has been developing new governance arrangements based on a model that was agreed by the SAB in December 2014. Whilst the principles of how the SAB will be governed have been agreed there is much work in hand to consolidate those arrangements. The Cabinet Member for Adult Social Care and Health will be consulted as the Chair of the SAB along with other key stakeholders to refine and embed new and developing governance arrangements. This includes developing a new assurance framework, reviewing local safeguarding procedures and protocols, and compacts/agreements to ensure co-operation between agencies.
- 4.6.2. The SAB will also be responsible for producing an annual strategic plan to co-ordinate safeguarding activities and an annual report to demonstrate its impact and delivery of the annual strategic plan. The Council will therefore play a key role in producing these important documents with input from other SAB member agencies.

- 4.6.3. The guidance introduces a new relationship between the Chair of the SAB and the local authority chief executive bringing this into line with the arrangement for local safeguarding children's boards.

## **5. Implications for partner organisations**

- 5.1. The Care Act 2014 has wide ranging implications for a number of partner agencies but most specifically for NHS organisations. These new provisions require not only action from individual NHS bodies but will also require both policy and commissioning alignment of partnership working to deliver the expected outcomes.
- 5.2. The Council's implementation team has offered support to partner agencies and the Health and Wellbeing Board has sought assurance from partner bodies about system readiness by means of a report to its February meeting.

## **6. Approach to implementation**

- 6.1. Due to the scale and scope of the Care Act 2014 the Council has established a cross Directorate Care Act Programme Board chaired by the Corporate Director of Adult and Community Services to oversee implementation. This work is supported by a small programme team.
- 6.2. Wherever possible the Council has drawn on national and regional implementation work. Officers have actively participated in all the regional fora and led some workstreams. An example of this is the national communications materials.
- 6.3. The Department of Health in partnership with Public Health England have launched a public awareness campaign to help people understand the changes and spread key messages. The national campaign features radio advertising, door drops, newspaper and magazine features, and information provided to GP surgeries. A local communications plan has been developed to supplement those activities. To this end the Council is using a Department of Health toolkit to produce locally specific messages and materials.
- 6.4. Nevertheless, the lateness of regulations and detailed statutory guidance (which differed significantly from earlier drafts) means that the timetable and workload is extremely challenging.
- 6.5. It is anticipated that the Council will be able in all material matters to discharge its new responsibilities from 01 April 2015. However, some system development and work to fully embed the changes will require further work post-April to delivery efficiently.

## **7. Financial Implications**

Implications completed by Roger Hampson, Group Manager, Finance

- 7.1. Following the Chancellor's Autumn Statement in December, the Department of Health (DH) has now published information providing additional details of specific grants and other funding streams to support the implementation of the Care Act 2014. In addition, some existing budgets within base are being refocused to support implementation as appropriate where the current activity directly impacts on the

delivery of the Care Act 2014. The Care Act Programme Board is working through the identification of implementation costs and allocating these against funding streams. Further details of these funding streams are provided below. Once this process is complete Members will be asked to make decisions about how those funding streams are to be spent for the purpose of implementing the Care Act 2014.

7.2. The major financial impact for local authorities as a result of the Care Act 2014 is from 2016/17 with the raising of ceilings where individuals will pay less towards their care costs, and the local authority will pay more. Further draft guidance is expected to be published shortly, and further financial modelling work then will be undertaken to estimate the likely impact on the Council. Provisionally, this is calculated at £4.5m; details of additional funding from central government may not be announced until after the General Election, possibly in December 2015.

7.3. One-off funding streams to support the implementation of the Care Act in 2014/15 are:

- DH Development Fund - £125k available to each local authority
- Allocation from Regional Training resources - £16k
- Call on departmental reserve already agreed by Cabinet - £500k.

7.4. Funding streams available in 2015/16 are:

- New Burdens Grants for early assessments (£331.1k), deferred payments (£230.5k), and for Carers (£211.1k)
- Social Care Capital grant of £508k of which £200k has been nominally allocated for IT aspects of the Care Act 2014
- Better Care Funding from the CCG of £513k subject to finalisation of the s75 agreement (including funding for Independent Mental Health Advocacy and Disregards for Guaranteed Income Payment for Veterans).

7.5. However pressure and demand for services and resources is impossible to determine. The pressure points are:

- Demand for assessments and services, and demand from carers given their new rights to services.
- Increased expectations for prevention and wellbeing services/interventions.
- From April 2016, demand for services from self-funders. Notably managing care accounts and supporting systems for the cap on care costs.

## **8. Legal implications**

Implications completed by Dawn Pelle, Adult Care Lawyer

8.1. The legal implications for the authority will be immense if the Care Act 2014 processes are not adhered to. The statute requires written confirmation in a number of areas. Further there are clear processes which if not followed could lead to challenges by way of appeal when it is operative, or for now challenges in the High Court. This means that there has to be meticulous recording and documentation by staff as they will have to justify decisions they make in their assessments. All teams that will be working with the statute should have at least one copy of the Care Act Manual<sup>2</sup> as Community Mental Health Teams have the Mental Health Act Manual.



Staff should have strong knowledge of the Guidance even if they are not so with the actual statute. The workforce training and development programme set out in paragraph 4.1 is therefore crucial to successful implementation and good practice going forward.

## 9. Other implications

9.1. **Risk Management** - The Care Act implementation programme carries risk in several areas. Major risks include:

- Short timescales in which to deliver the reforms compounded by late issuing of statutory guidance
- Affordability of meeting the Care Act 2014 requirements
- Legal challenge due to non-compliance with regard to social care practice/procedure
- Implementing changes to IT systems by 01 April 2015
- Workforce capacity and skill

Risks are managed through the Care Act Programme Board through the Programme Risk Log which is reviewed regularly. Care Act 2014 implementation also features on the Corporate Risk Register to ensure oversight of risk and escalation of issues if needed.

9.2. **Corporate Policy** - Further to policy implications highlighted in section 5 of this report, the Care Act 2014 will require the Council to develop its approaches to commissioning. The statutory guidance on market shaping introduces new requirements that promote choice and control (personalisation), wellbeing, higher quality standards for services, and improved competency levels for commissioning. The guidance recommends that authorities develop strategies to demonstrate how the commissioning function aligns with legal duties, corporate plans, local needs analysis, and market intelligence in order to deliver outcomes for the individual and collectively. In light of this requirement a prevention strategy is being developed, it will be presented to the Health and Wellbeing Board for agreement in May 2015.

9.3. **Customer Impact** - A central tenet of the Care Act 2014 is to put the individual in control of decisions about their care and support and to achieve personal outcomes to that individual through care and support services (and universal service provision). Work to develop approaches to assessing need, managing transitions between children's and adult's services, and changes to how we will conduct financial assessments are examples of how implementing the Care Act will contribute to improving the overall customer experience.

9.4. **Health issues** - New duties around promoting wellbeing and taking steps to prevent and delay the onset of care and support needs will contribute the overall health of residents.

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

- Care Act Statutory Guidance
- Health and Wellbeing Board reports (09 December 2014, 29 July 2014, 11 February 2014)
- Care Act Programme Board documentation

## **List of appendices**

- Appendix 1: Care Act Briefing