

TELFORD & WREKIN COUNCIL

CABINET – 16 OCTOBER 2014

CARE ACT 2014

REPORT OF DIRECTOR OF HEALTH, WELLBEING & CARE

LEAD CABINET MEMBER – CLLR ARNOLD ENGLAND

PART A) – SUMMARY REPORT

1. SUMMARY OF MAIN PROPOSALS

1.1 This report updates on progress towards implementation of Part 1 of the Care Act, which comes into force from 1 April 2015 and Part 2 from 1 April 2016. Consultation on Part 1 statutory guidance and regulations closed on 15 August.

1.2 As part of the implementation planning, modelling work is underway locally to estimate the costs associated with the additional responsibilities which are placed on us by the Act and compare against the provisional budget allocations set out by Government.

1.3 Analysis of readiness for what are the biggest changes in Adult Social Care since the National Assistance Act, 1948 created the welfare system, suggest that we are making “ moderate progress” in preparing for Care Act implementation and we are “fairly confident” that we will be in a position to deliver the Care Act reforms from April 2015. This is against a background of uncertainty that the reforms will be fully funded nationally at a time when all Councils are under significant financial pressure and the tight timescales for implementation.

1.4 The report also highlights areas that will require policy decisions to be made ahead of implementation in April 2015.

2. RECOMMENDATIONS

2.1 Members agree to delegate responsibility for agreeing new Adult Social Care Policies, resulting from the Care Act, to the Director of Health, Wellbeing & Care in consultation with the Cabinet Member for Adult Social Care.

2.2 Members note that further reports will be brought to Cabinet in the run up to Part 1 implementation of the Act in April 2015 and through 2015/16 in preparation for Part 2 implementation from April 2016.

2.3 Members support a wider briefing of all Councillors through a dedicated seminar.

3. SUMMARY IMPACT ASSESSMENT

COMMUNITY IMPACT	Do these proposals contribute to specific Co-Operative Council priority objective(s)?	
	Yes	<i>Vulnerable Children and Adults</i>
	Will the proposals impact on specific groups of people?	
	Yes	Yes Will impact on people who have needs as a result illness, frailty or disability and their family carers.
TARGET COMPLETION/DELIVERY DATE	<i>April 2015</i>	
FINANCIAL/VALUE FOR MONEY IMPACT	Yes	There are significant financial implications for the Council associated with the Care Act. These are detailed within section 4
LEGAL ISSUES	Yes	<p>The Care Act 2014 received Royal Assent on 14 May 2014.</p> <p>The Care Bill was introduced in the House of Lords on 9th May 2013.</p> <p>Most of the clauses in Parts 1 (Care and Support) and 3 (Health) of the Bill had been published in draft form in July 2012 (as the Draft Care and Support Bill) for consultation until October 2012 and pre-legislative scrutiny.</p> <p>The Act is intended to give effect to the policies requiring primary legislation that were set out in the White Paper Caring for our future: reforming care and support (July 2012), to implement the changes put forward by the Commission on the Funding of Care and Support, chaired by Andrew Dilnot, and to meet the recommendations of the Law Commission in its report on Adult Social Care (May 2011) to consolidate and modernise existing care and support law from over a dozen Acts into a single framework. The Act also gives effect to elements of the Government's initial response to the Mid Staffordshire NHS Foundation Trust Public Inquiry that require primary legislation.</p> <p>The main issues for the Local Authority</p>

		<p>arising from the Act are set out within the body of this report.</p> <p>The Care Act comprises 129 Sections in five Parts and 8 Schedules.</p> <p>11 Factsheets were published by the Department of Health on 6 June 2014 to accompany Part 1 of the Act to provide an overview of the duties and powers that local authorities will have.</p> <p>The Act will be accompanied by relevant Statutory Instruments and Guidance.</p> <p>For Part 1 of the Act (Care and Support), these were issued for consultation on 6 June 2014 until 15 August 2014 , with a view to the final versions being published in October 2014 for implementation in 2015 - 2016</p> <p>Consultation on the funding formulae for the 2015 - 2016 implementation was launched on 31 July 2014, with a closing date of 9 October 2014</p>
OTHER IMPACTS, RISKS & OPPORTUNITIES	No	
IMPACT ON SPECIFIC WARDS	No	<i>Borough-wide impact</i>

4. INFORMATION

4.1 Background

4.1.1 The Care Act replaces various pieces of adult social care legislation dating back to the National Assistance Act, 1948 (repeals in whole or part 26 pieces of primary or secondary legislation and 14 pieces of statutory guidance). The Act fundamentally changes the law and practice relating to the provision of community care services for adults and their carers and will require major changes in the way community care services are delivered, with significant impact for service users & their carers, the workforce, workforce development, care providers, informatics, policy & procedures, public information, budget, etc.

4.1.2 Nationally and locally in respect of consultation over the Bill, there was general support for the content, recognising that it set out to implement the recommendations of the Law Commission Review of Adult Social Care Law (updating the law in line with current good practice) & the Dilnot Review of Adult Social Care funding and embed current best practice in law.

4.1.3 However there were concerns that the Bill, whilst addressing the concerns of the public about costs of care provision falling on the individual's life time savings, it did not address concerns about the growing demands on the service at a time of Government reductions in Local Government funding. In addition there were concerns expressed by Association of Directors of Adult Social Services (ADASS) and Local Government Association (LGA) that the Government's estimates of the cost of implementing the Act, underestimated the potential increased costs to LAs as a result of changes in respect of eligibility criteria for individuals and their carers (from April 2015) and funding reform (from April 2016).

4.1.4 The Government subsequently announced that new Guidance & Regulations would be released in 2 phases, Part 1 covering the clauses implemented from April 2015 and Part 2 those implemented from April 2016.

4.1.5 Part 1 covers: (for more detail see)
http://www.local.gov.uk/documents/10180/11309/L14-284+Getting+in+on+the+Act_web.pdf/edfb186d-166f-4058-a20d-5ba5e2646e6e

General Duties & Universal Services	Wellbeing; Preventing, reducing and delaying needs; Information & advice; Market shaping and commissioning; Managing provider failure and other service interruptions
First contact and identifying needs	Needs assessments and carer's assessments; Eligibility; Independent Advocacy
Charging and financial assessment	Charging for care & support; 12 week property disregard; other disregards; Choice of accommodation & additional payments; Pension reform; Deferred payments agreement;
Person centred care and support planning	Care and support plans; Personal budgets; Direct payments;
Integration and partnership working	Integration, co-operation and partnerships; The boundary with the NHS; Delayed transfers of care; Working with housing authorities and providers; Working with employment and welfare services; Transition to adult care and support; Prisons, approved premises and bail accommodation; Delegation of local authority functions
Adult Safeguarding	Adult safeguarding

Moving between areas: inter-local authority and cross border issues	Ordinary residence; Continuity of care; Cross-border placements
Other areas	Registers; The transition to the new legal framework

4.1.6 Part 2 will cover Funding Reform, including:

- Separation of accommodation (payable by all either from income or benefits) and care costs
- Cap on care costs - £72k across a person's lifetime
- Increased capital thresholds from £23,250 to £123k

4.2 Consultation process on Part 1 Regulations & Guidance

4.2.1 Draft Regulations and Guidance on Part 1 were released at the beginning of June for consultation, with a closing date of 15 August 2014, with a view to final Regulations and Guidance being issued by October 2014; thus allowing local authorities 6 months to finalise preparations for the new Act.

4.2.2 Current indications are that Draft Regulations and Guidance on Part 2 will be released in the autumn 2014.

4.2.3 In consultation with the Cabinet Member for Adult Social Care we submitted a general response to the Consultation. The main areas covered were:

- General support for the principles underpinning the legislation and guidance
- Concerns about the funding to fully support the reforms, against a background of significant existing pressures
- Tight timescales for implementation given the scale of change, workforce & training implications need to introduce new IT systems, etc.

4.3 Financial information

4.3.1 Government have made £125,000 available to every local authority during 2014/15, to use to help plan and prepare for the implementation of the Act. In addition £282,895 has been made available to the West Midlands LAs, for collective partnership working to aid implementation, administered through ADASS West Midlands.

4.3.2 Government have provisionally allocated specific monies to individual authorities for 2015/16 on the basis of additional responsibilities resulting from the implementation of the Act, in effect the "Part 1" responsibilities coming into force from April 2015. It had been estimated that T&W Council would receive

an additional £1.479m of which £559k (revenue & capital funding) is within the Better Care Fund (BCF). The current BCF plan identifies this amount as a commitment against the pooled BCF budget. The remainder of the funding £919k is subject to another consultation exercise on the formulae for distribution and the current proposals indicate that this amount is likely to reduce by between £160k and £220k. This reduction is likely to cause increased pressure on Council resources. This funding consultation closes on 9th October.

4.3.3 The funding includes indicative allocations for Assessment & Eligibility, IT, Capacity, Deferred payments, Information, Personalisation, Carers, Advice & Support, Quality, Safeguarding, Veterans and Law Reform (See Appendix 1 for detail).

4.3.4 There are additional concerns that these allocations underestimate the costs of implementing Part 1 of the Act in 2015/16. In particular that:

- The Act raises expectations at a time when existing financial pressures mean there are insufficient resources to invest in prevention and early intervention principles that underpin the Act's aim to reduce demand on more expensive, on going care
- the new national eligibility framework will be worded in such a way that more people could be eligible for support compared with the current "substantial" threshold of the existing criteria – this is not recognised in any additional funding
- placing carers on the same legal footing as the service user significantly extends the number of carers with a right to an assessment in their own right and extends the number of carers who will be eligible for services – whilst this is recognised in additional funding there are concerns that this does not equate to the numbers of carers who could come forward and expect assessment and additional support

4.3.5 We have completed some modelling work to predict the impact of Part 1 of the Care Act and compare the outcomes with the indicative maximum amount of new monies available as set out in Appendix 3. All Local Authorities have been asked to use the same modelling tools to calculate the assessments and carers' costs although we are continuing to identify errors within these national models which impact on the veracity of any results. We are currently estimating the costs being contained within the allocation of funding but we will only know the true position once we have worked under the Act for some time. Current modelling is based on unit costs but further work will need to be carried out internally to determine the actual costs that will need to be funded including the impact on staffing etc. It has been difficult to model the impact of a greater number of deferred payments being made available although we would plan to negate the impact of increased administration by recovering this cost through an administration fee and any cash flow implications through the application of an interest charge. It is clear, however, from early work that any increase is likely to leave the Council holding a significant amount of debt on it's balance sheet.

4.3.6 As yet there have been no specific announcements about funding for the Part 2 funding reform changes that are implemented from April 2016. Government indicated that they estimated the cost of these changes to be in the region of an additional £1 billion nationally. ADASS and the LGA have both indicated that they believe this figure is an underestimation, whilst no decisions have been made about the formula on which this sum of money will be distributed between local authorities.

4.3.7 In respect of Part 2 Funding Reforms we have commenced modelling work to understand how many existing self-funders will enter the system from April 2016 and qualify for local authority support given the raised capital thresholds and cap on care costs payable across an individual's life. Shropshire Partners in Care have sent out, collated and shared the findings with us of a detailed questionnaire sent to T&W providers. This has provided us with valuable information about the number of self-funders, but the actual cost post April 2016 will depend on a detailed financial assessment of each self-funder as well as the rate of entry of "unknown" new self-funders post April 2016. Plus we will need to factor in the impact of the "care cap", though payments made by self-funders only count from April 2016, so it will take some time for individuals to reach the cap, depending on the annual agreed cost of their care. A deadline of 30th September has been set for LAs to provide the results of their modelling on this element of the Act to the national Funding Reform team (LGA, ADASS, DoH). There are several different models (Surrey, Birmingham, Lincolnshire) being used currently which may lead to a wide range of costs being identified across Councils. We are awaiting the final version of the preferred Funding Reform Team Surrey model so that we can complete comparator modelling against that which we have completed using the Birmingham model.

4.3.8 There is a significant risk that any shortfall in funding for Part 2 reform will just compound the existing budget position and any shortfall in funding Part 1 reforms.

4.3.9 This will be made more complicated by the introduction for the first time of a differentiation between care costs and accommodation costs. Accommodation costs will remain the responsibility of the individual across their lifetime. We will need to agree a new procurement process that takes account of this differentiation between accommodation and care costs, whilst ensuring that individuals are aware of their responsibility for paying accommodation costs.

4.3.10 We need to flag that we expect self-funders already in the system to start approaching the local authority during 2015/16 in preparedness for April 2016. Each individual will require a full community care assessment to determine eligibility for community care services and agree their care account detail (the amount of money the Council agrees will be taken into account annually towards their life time care cap of £72k) with the Council.

4.3.11 This therefore means there will be a significant spike in assessment and financial assessment activity, probably toward the second half of 2015/16,

as well as the increased assessment, service provision, deferred payments, etc workload associated with Part 1 implementation.

4.3.12 As a Council we will need to strive to improve our efficiency in terms of assessment activity, ensuring all processes are fit for purpose and as lean as possible, with staff processing more assessments at reduced cost.

4.4 Implementation Progress

4.4.1 At a national level there is a Joint Programme Management Office tasked with co-ordinating the implementation of the Care Act, including representatives of ADASS, LGA, and Department of Health. Care Quality Commission, National Skills Council, Skills for Care, etc. Plus a Care & Support Advisory Group with a wider group of stakeholders.

4.4.2 Undoubtedly implementation is a major challenge on top of all the other pressures faced by Adult Social Care, as the service looks to manage down demand and spend to meet significant savings targets in 2014/15 and 15/16.

4.4.3 We have established a Care Act Programme Board to oversee implementation plans, meeting monthly, with a number of work streams, each led by a Service Delivery Manager as follows:

- Funding reform & Deferred Payments
- Commissioning
- Information & Advice
- Assessment & Safeguarding
- Workforce Development
- Infrastructure
- Communication & Engagement

4.4.4 The Department of Health in partnership with the LGA and ADASS have set up a series of stocktakes to inform progress on implementation and highlight concerns. The first stocktake was submitted at the end of May 2014 and reflected a relatively low level of preparedness within the Council, though this was prior to the first meeting of the Programme Board.

4.4.5 A second stocktake was submitted on the 23 of September. It asked 49 questions about:

- **Programme management and governance** – including overall state of preparedness, oversight through Council's corporate risk management system and awareness of Councillors, Senior Management Team, Adult Social Care staff and Health & Wellbeing Board
- **People** – mapping self-funders, meeting new duties for carers, preventing needs for care & support, provision of information, advice & advocacy, prisoners,
- **Money** – cost modelling, deferred payments
- **Systems** – IT & financial systems, workforce

- **Communications & Planning** – communication with key external partners, service users, carers
- **Market shaping & Commissioning** – commissioning plan, market shaping including market position statements, sustainable provision, improved wellbeing and outcomes, integration
- **Support** – general progress, risks, additional support and concerns

4.4.6 In summary our submission said we are making “ moderate progress” in preparing for Care Act implementation and we are “fairly confident” that we will be in a position to deliver the Care Act reforms from April 2015. This is against a background of uncertainty that the reforms will be fully funded nationally, at a time when all Councils are under significant financial pressure and the tight timescales for implementation.

4.4.7 We specifically highlighted the following risks:

- Uncertainty about additional demand from self-funders,
- Uncertainty about additional demand from carers,
- Managing additional assessments,
- Impact on local provider market,
- New national eligibility threshold,
- Total implementation costs for 2015/16,
- Total implementation costs for 2016/17,
- Uncertainty over key national policy decisions,
- Public expectation (including legal challenges),
- Deferred payments agreements,
- Lack of funding to commission or maintain preventative services

4.5 Policy Decisions relating to Care Act:

4.5.1 The Care Act introduces such sweeping changes in law and practice that it will require a number of policy decisions to be agreed, with little time to formulate policy and procedure for Part 1 of the Act, given the final regulations and guidance will not be released until October. In these circumstances it would be helpful for members to agree to delegate responsibility for agreeing new Adult Social Care Policies to the Director of Health, Wellbeing and Care in consultation with the Cabinet Member for Adult Social Care.

4.5.2 Whilst we are still working through the draft Guidance & Regulations it would appear that policy decisions will be required in the following areas (more work is required to develop this list over the next few months):

- **Duty for Wellbeing and Prevention** - need to agree our wellbeing and prevention offer and consider approach to charging for prevention services
- **Eligibility** – will need to adopt new eligibility framework to replace existing framework for people with needs. The minimum threshold of eligibility is

no longer in the Council's gift to set, though the Council could approve a lower threshold (suggest not).

A new eligibility framework for carers will need to be agreed in line with a new national framework for carers

- **Delegation of LA function** – allows LAs to delegate through commissioning nearly all adult social care functions, including assessment externally. The exceptions are safeguarding, charging and duties to co-operate and integrate. Whilst we already purchase most care provision externally T&W Council's strategic approach has been to retain responsibility for assessment functions. Officers would continue to recommend this approach but can see advantages of looking to externalise some functions and/or working in partnership with external bodies, for example in respect of support planning.
- **Deferred Payments** – Currently we have a Deferred Payments scheme. The Act states that we must have one, though enables LAs to charge for scheme and charge interest on loan. We will need to make policy decisions on this
- **Safeguarding Adults** – Puts on statutory footing and whilst we already have a Safeguarding Adults Board, sets out requirements. Given the importance of this we should as a Council set out our high level approach to this, particularly with respect to a T&W specific Safeguarding Adults Board (see separate paper)
- **Charging (Client & Carer contributions) related decisions** – Need to approve new Charging Policies and consider approach to charging for Prevention and Carer services
- **Fines for delayed discharge** – whilst the Care Act abolishes the Delayed Discharge Act it does enable NHS Trusts to impose fines for delayed discharges from hospital that are the responsibility of the LA and the time period now extends to include weekends. Historically there was an agreement in place with the local health system to not fine. This will need to be reviewed with the local health economy
- **Registers** – Legal duty only to keep register of people who are "sight impaired or severely sight impaired", whilst repealing requirement under Chronically Sick & Disabled Persons Act, 1973 to hold registers on all other client groups. Officers would recommend only holding a register as per our legal requirements only.
- **Adult Social Care Policies** – review of almost all existing Policies & Procedures relating to adult social care will be required and approval of revised and new P&Ps.
- **Public Information** – review of almost all existing public information relating to adult social care and approval of revised and new public information will be required

- **Budget planning for the Care Act** – Approach to budget planning for the Care act will need to be built into the budget planning rounds for 2015/16 and 16/17
- **Others** – to be identified.

4.6 Conclusion

4.6.1 This reports set out the implications of the Care Act and the implementation progress so far, state of preparedness, challenges and risks. It is envisaged that further reports will need to be brought to Cabinet in the run up to Phase 1 implementation over the next 6 months and subsequently through 2015/16 in the run up to Part 2 implementation.

4.6.2 A further report should be scheduled to come to Cabinet on 11 December, to update on implementation progress, challenges and risks, report on any significant changes once the Part 1 Regulations & Guidance are finalised and published in mid - October 2014 and identify key policy decisions required.

5. PREVIOUS MINUTES

5.1 Cabinet Report, 12 December 2013

6. BACKGROUND PAPERS

6.1 Draft Care Act Guidance & Regulations – Published June 2014

<https://www.gov.uk/government/consultations/updating-our-care-and-support-system-draft-regulations-and-guidance>

6.2 Get in on the Act – Care Act Summary produced by LGA -

http://www.local.gov.uk/documents/10180/11309/L14-284+Getting+in+on+the+Act_web.pdf/edfb186d-166f-4058-a20d-5ba5e2646e6e

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Appendix 1

Adult social care new burdens funding (£335m nationally)		Your allocation, £000s
Assessment & eligibility	<i>Funding for early assessments and reviews</i>	468
IT	<i>Capital investment funding including IT systems</i>	150
Capacity	<i>Funding for capacity building, including recruitment and training of staff</i>	65
Deferred payments	<i>Year 1 funding for the implementation of the universal deferred payment scheme</i>	355
Information	<i>Funding for a national information campaign</i>	32
Total		1,070

Care Bill implementation funding in the Better Care Fund (£135.9m nationally)		Your allocation, £000s
Personalisation	<i>Create greater incentives for employment for disabled adults in residential care</i>	0
Carers	<i>Put carers on a par with users for assessment.</i>	66
	<i>Introduce a new duty to provide support for carers</i>	143
Information advice and support	<i>Link LA information portals to national portal</i>	0
	<i>Advice and support to access and plan care, including rights to advocacy</i>	44
Quality	<i>Provider quality profiles</i>	0
Safe-guarding	<i>Implement statutory Safeguarding Adults Boards</i>	16
	<i>Set a national minimum eligibility threshold at substantial</i>	85
Assessment & eligibility	<i>Ensure councils provide continuity of care for people moving into their areas until reassessment</i>	13
	<i>Clarify responsibility for assessment and provision of social care in prisons</i>	0
Veterans	<i>Disregard of armed forces GIPs from financial assessment</i>	5
Law reform	<i>Training social care staff in the new legal framework</i>	14
	<i>Savings from staff time and reduced complaints and litigation</i>	-41
Advocacy		
Impact of DWP policies on councils/providers	<i>Independent Mental Health Advocacy</i>	
	<i>Pressures relating to pensions auto-enrolment (provider cost) and the announced 1% increase of working age benefits in 15/16 (reduced client contribution)</i>	28 36

Total	409
Grand Total	1,479