

Briefing Note for Health and Well Being Board – Care Act 2104

1) SUMMARY

The purpose of this report is to raise awareness of the key principles and duties contained within Part 1 of the Care Act 2014 and provide a local progress update on preparations for implementing the Act.

The Act represents the most significant reform of the adult care and support system in England in more than 60 years. It puts people and their carers in control of their care and support and for the first time introduces a limit on the amount anyone will have to pay towards the costs of their care. The Act also delivers key elements of the government's response to the Francis Inquiry into the events at Mid Staffordshire hospital.

On the 6th of July the Department of Health issued draft guidance for consultation.

The closing date for response to the consultation is the 15th of August with final guidance expected to be published in the Autumn.

A phased introduction of the Act will then commence with many of the duties coming into effect from April 2015. The cap on care costs will not however come into force until April 2016.

2) RECOMMENDATIONS

It is recommended that Health and Well Being Board:

- Notes the content of the briefing and in particular the key principles and duties of Part 1 of the Care Act 2014
- Notes the progress made locally and consider areas where the Health and Well Being Board can facilitate successful implementation in the short, medium and longer term
- Notes the launch of the consultation on the draft guidance and consider whether the Board wishes to make a response
- Agrees to receive further progress updates on local implementation of the Act.

3) BACKGROUND

The Care Bill was announced in the Queen's Speech in May 2013 and after completing its Second Reading in the House of Commons gained Royal Assent on the 14th May 2014 to become the Care Act 2014 (see attached Addendum 1, Care Act Glossary to aid definitions)

The Act is in five parts: Part 1- Care and Support, Part 2 - Care Standards, Part 3 - Health, Part 4 - Health and Social Care, Part 5 General.

This focus of this report is on highlighting the principles and duties contained within Part 1 of the Act which contains 79 clauses and 4 schedules. Some of these are new in law and practice, some are new in law but not new in policy whilst the remainder consolidate or modernise existing law.

The Act builds on considerable earlier work, including:

- A review of adult social care law conducted by the Law Commission between 2008 and 2011. The Commission's final report detailed 76 recommendations for the reform of adult social care law.
- The Commission on Funding of Care and Support, chaired by Sir Andrew Dilnot, which looked at how to make care funding fairer
- A Draft Care and Support Bill, incorporating many of the Law Commission's recommendations, which was subject to a period of pre-legislative scrutiny overseen by a Joint Committee chaired by former Care Services Minister, Paul Burstow MP.

In introducing the new Act, Sir Norman Lamb said that "the Care Act represents the most significant reform of care and support in more than 60 years, putting people and their carers in control of their care and support and for the first time putting a limit on the amount anyone will have to pay towards the costs of their care".

On the 6th of July the Department of Health launched a consultation on draft guidance covering duties and responsibilities within Act and which contains 85 questions to respond to. The consultation concludes on the 15th August with final guidance expected in the autumn.

4) PRINCIPLES AND KEY DUTIES OF THE ACT

4.1 The Well Being Principle

New in law but not in policy this principle enshrines a social care system that is based on the core principle of the well-being of the individual. As a result there will be a growing need to provide more care and support in the community and in people's homes to maximise people's well-being.**

4.2 Prevention

New in law but not in policy the Act establishes a duty to provide preventative services to reduce or delay the onset of greater needs. Local authorities will need to understand and consider what preventative interventions are available in their area and those which need to be developed along with understanding needs that are not being met.

** “Well-being”, in relation to an individual, means that individual’s well-being so far as relating to any of the following—

- (a) personal dignity (including treatment of the individual with respect);
- (b) physical and mental health and emotional well-being;
- (c) protection from abuse and neglect;
- (d) control by the individual over day-to-day life (including over care and support, or support, provided to the individual and the way in which it is provided);
- (e) participation in work, education, training or recreation;
- (f) social and economic well-being;
- (g) domestic, family and personal relationships;
- (h) suitability of living accommodation;
- (i) the individual’s contribution to society.”

4.3 Information and advice

Through modernisation of existing law this clause provides for an information and advice service to be available to all people in a local authority area regardless of whether or not they have eligible care needs. This replaces existing duties and updates requirements to specify in more detail what a universal information and advice service must include based on best practice.

4.4 Charging and Assessing Financial Resources and Deferred Payments

The Act seeks to establish a fairer system for paying and charging for care and is based on the findings of the Commission of Funding Care and Support. The key reforms are:

- **A cap on care costs.** New in law and practice is the introduction of a cap on the amount an individual has to pay to meet their eligible care and support needs within their lifetime. The proposal, subject to consultation, is that people born with eligible care needs or who develop them in early life will receive full financial support from the state, with tiered cap levels for people of older working age, culminating in a cap of £72,000 for people over state pension age. People will still be expected to contribute to their living costs in residential care, dependent on their level of income.
- Means-tested support will continue for people of lower financial means, but the capital asset threshold for people in residential care, beyond which no financial help is given will increase from the current level of £23,250 to £118,000, including the value of the person’s home.
- **Deferred Payments.** New in law and practice is a deferred payment arrangement which allows for the payment of care costs to be postponed until the date of the person’s choosing or, if they wish, until after their death. The proposal is that deferred payment agreements would be available to anyone in residential care with assets from savings, but excluding the value of their home, of less than £23,250. The scheme will help those people in

residential care whose property is taken into account by the means-test, but who do not wish to sell their home, or cannot do so, in order to meet their care costs.

4.5 Assessing and Meeting Needs

- **Assessing self-funders.** New in law and policy the introduction of the cap on care costs to the individual will require local authorities to assess anyone who may have social care needs in their area. For individuals eligible for financial support who have needs that meet the eligibility threshold, the local authority will be required to provide a personal budget. Those whose needs meet the eligibility threshold but who are not eligible for financial support will hold what is known as an independent personal budget and the local authority will be required to monitor through a care account an individual's contribution to the cap. The local authority will also be required to provide financial support when the cap is reached.
- **Support for Carers.** New in law and practice the act establishes a duty to meet Carers' needs for support in carrying out their caring duties.
- **National Eligibility Criteria.** A national minimum threshold will be established to ensure that a new consistency is created across the country on who is eligible for social care.
- **Prisoners** - New in law but not in policy the Act sets out the local authorities responsibilities for provision of care and support for adult prisoners and people residing in approved premises who have eligible needs.

4.6 Market shaping and Provider Failure

- New in law but no in policy the Act introduces a general duty to promote diversity and quality in the provision of services. This will strengthen the need for commissioners to develop high quality services that promote well-being and are focused on outcomes. Central to this duty will be the use of Market Position Statements that set out clearly the needs of the population, identifies existing provision, and highlights potential gaps.
- New in law but not in policy the Act sets out the requirement for local authorities to temporarily meet the needs of an adult where they are not being met as a result of provider failure.

4.7 Adult Safeguarding

New in law but not in policy the Act puts Safeguarding Adults Boards on a statutory footing for the first time and requires every local to have one – they must include the local authority, NHS and the Police. They must produce published plans, and an annual update on progress must be publicly reported. Safeguarding in association with market oversight also becomes an important duty. Local authorities will need to understand how the market is operating in their area and ensure continuity of care if

a provider fails. This includes people paying for their own care from the provider as well as those for whom the local authority may fund their care.

4.8 Integration

New in law but not in policy the Act places a duty on the local authority to carry out their care and support functions with the aim of integrating services with those provided by the NHS or other health related services (e.g housing) to improve people's well-being. This is seen as one of the key ways to improve the effectiveness of commissioning and service delivery and to achieve efficiencies across the care and support system. This approach is embedded within the Better Care Fund whereby pooled funds and transfers of money from the NHS will be used to develop an integrated social care and health solution to increased demand on the acute sector.

4.9 Funding the Reforms

In the June Spending Round the government announced £335 million in 2015/16 to enable councils to prepare for reforms which include the introduction of a cap on people's care costs from April 2016 and a universal offer of deferred payment agreements from April 2015. These reforms are intended to prevent people being forced to sell their home in their lifetime to pay for residential care.

The £335 million covers:

- £145 million for early assessments and reviews.
- £110 million for deferred payment (cost of administering the loans and the loans themselves).
- £20 million for capacity building including recruitment and training of staff.
- £10 million for an information campaign.
- £50 million for capital investment, including IT systems (which sits in the Better Care Fund).

The Department for Health has also identified £135 million of other costs for 2015/16 relating to issues such as: putting carers on a par with users for assessment; implementing statutory Safeguarding Adults Boards; and setting national eligibility. The Department's position is that the Spending Round allocated funding to cover these costs as part of the Better Care Fund.

5) RISKS AND CHALLENGES

Clearly the implementation of the Care Act is not without risks both nationally and locally and it is already apparent that there are considerable challenges. These include:

Identifying local self-funders and estimating the numbers who may come forward and the time needed to assess their needs

Identifying the additional capacity that will be required within the workforce to handle the potential increase in assessments

Examining how this challenge can be managed through increased use of self-assessment and outsourcing of assessments to the third sector

Calculating the costs of implementation, excluding the costs of the cap which will be funded by government

Engaging with providers over the impact of the reforms on them

Assessing the impact on IT systems and on financial processes and information and advice systems.

6) PREPARATIONS FOR IMPLEMENTATION

Running through the Act is the principle of putting people and their carer's in control of their care and support and a system that recognises and builds upon the strengths and assets of individuals and communities rather than simply focussing on need. A considerable amount of work has already been undertaken to transform the local system of care and support at the heart of which is a 'social care rescript' and culture change programme running alongside community capacity building work, a focus on prevention and reablement, personalisation, integration and work around the Better Care Fund.

Furthermore in January this year Cabinet approved Building the Road to Independence - A Strategy for Modernising Adult Social Care in Doncaster. As a sound basis from which to implement the Care Act this places Doncaster in strong position particularly as the work undertaken so far is receiving both regional and national attention.

There has been investment in additional finance capacity to undertake financial modelling relating to the funding reforms as well understanding wider financial implications.

Resources have been identified to recruit to a Programme Manager. The closing date for applications is the 4th of July with interviews scheduled for mid - July.

A regional self-assessment has been completed which has helped individual councils understand their progress when compared with others along with the support needs at both individual council level and collectively across the region. This self-assessment showed Doncaster's progress to be early stages but this is comparable with all Councils within the region.

A local strategic programme group has been established to oversee implementation and is representative of internal partners and the CCG.

Draft guidance has been distributed, as far as possible within existing governance arrangements with a view to improving understanding of the implications and requirements of the Act and providing a comprehensive response to the consultation.

7) CONCLUSION

The Care Act is an immense piece of legislation that brings together many year of disjointed legislation and tries to address the major challenges of the moment and the immediate future.

Preparations for implementation are underway but the Act is not without risks and challenges and this is a key area for work as we develop as a Social Care and Health Community.

Clearly as the risks and challenges are identified and the implementation plan developed there will be a further need to further the Board

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LINKS

The Care Act (as enacted)

http://www.legislation.gov.uk/ukpga/2014/23/pdfs/ukpga_20140023_en.pdf

Draft Guidance www.careandsupportregs.dh.gov.uk

Consultation Document

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