Leicestershire County Council

CABINET – 23 MARCH 2021

WHITE PAPERS ON HEALTH AND SOCIAL CARE AND MENTAL HEALTH

REPORT OF THE DIRECTOR OF ADULTS AND COMMUNITIES

PART A

Purpose of the Report

1. The purpose of this report is to provide the Cabinet with a summary of the implications of the recent White Papers on Health and Social Care and Mental Health for the County Council and to seek agreement for the Director of Adults and Communities to submit consultation responses to the Department of Health and Social Care on behalf of the Council.

Recommendations

2. It is recommended that the Cabinet:

   (a) Notes the implications of the recent White Papers on Health and Social Care and Mental Health for the County Council;

   (b) Agrees that a response be made to the consultations on the respective White Papers by the Director of Adults and Communities following consultation with the Cabinet Lead Members for Adult Social Care and Health and Wellbeing.

Reasons for Recommendations

3. The White Paper on Health and Social Care includes proposals for adult social care, public health and integrated working across the health and social care system. Some of the proposals will also affect the Health and Wellbeing Board and the Health Overview and Scrutiny Committee.

4. The White Paper on Reform of the Mental Health Act includes proposals for adult social care which may require changes to workforce requirements, the role of the Approved Mental Health Professional, the provision of community services and commissioning of independent sector services.

Timetable for Decisions (including Scrutiny)

5. It is expected that the proposals set out in the Health and Social Care White Paper will begin to be implemented in 2022, subject to parliamentary business. Responses to the consultation on the Mental Health White Paper are due on 21 April 2021. Following consideration of the responses, a draft bill will be brought forward when parliamentary time allows.

Policy Framework and Previous Decisions

6. None.

Resource Implications

7. Greater clarity on what the proposals set out in the White Papers will mean in practice is needed to enable an understanding of the resource implications for the County Council. References are made to further work being undertaken to determine any additional burdens on local authority funding.

8. The current Impact Assessment on the Reform of the Mental Health Act suggests overall implementation costs of £1.862 million, including £83 million on Independent Mental Health Advocates and £51 million for Approved Mental Health Professionals. However, this is subject to the outcome of consultation. The Impact Assessment notes that there are other non-monetarised costs which remain to be determined such as provision of additional community services.

Circulation under the Local Issues Alert Procedure

9. None.

Officers to Contact

Jon Wilson
Director of Adults and Communities
Tel: 0116 305 7454
Email: jon.wilson@leics.gov.uk

Mike Sandys
Director of Public Health
Tel: 0116 305 4239
Email: mike.sandys@leics.gov.uk

Rosemary Whitelaw
Head of Democratic Services (Job Share)
Tel: 0116 305 6098
Email: rosemary.whitelaw@leics.gov.uk

PART B

Background

Integration and Innovation: Working Together to Improve Health and Social Care for All: White Paper

10. The White Paper, published on 11 February 2021, covers a range of issues requiring primary legislation. It makes a welcome move towards collaboration, partnership and integration. The aims of the White Paper are:

    (a) To remove the barriers to an integrated system;
    (b) To remove much of the transactional bureaucracy that currently affects decision-making;
    (c) To ensure that the system is more accountable and responsive to the people that work in it and the people that use it.

11. It is worth noting that the proposals in the White Paper are not intended to be a coherent reform package. Further white papers on social care and public health are expected. A mental health White Paper, summarised in paragraphs 36 to 51 of this report, was published in January. Adult social care proposals will be brought forward later this year.

12. Much of the White Paper focuses on the development of Integrated Care Systems (ICSs) and increased joint working across the NHS and between the NHS and social care. The three factors that frame the proposed approach to integration are:

    (a) The importance of shared purpose within places and systems;
    (b) The recognition of variation – some of it warranted – of form and in the potential balance of responsibilities between places and the systems they are part of;
    (c) The reality of differential accountabilities, including the responsibility of local authorities to their elected members and the need for NHS bodies to be able to account for NHS spend and healthcare delivery and outcomes.

13. The NHS and Local Authorities (Public Health and Social Care) will be given a duty to collaborate with each other. The Secretary of State will be able to issue guidance as to what delivery of this duty will mean in practice. Health bodies, including ICSs, will also have a triple aim duty – to pursue simultaneously the aims of better health and wellbeing for everyone, better quality of health services for all individuals, and the sustainable use of NHS resources.

14. ICSs will be made statutory. They will consist of an ICS NHS Body and a separate ICS Health and Care Partnership. There is an expectation that they will be coterminous with local authorities. The local ICS will cover Leicester, Leicestershire and Rutland. Both ICS bodies will need to draw on the

experience and expertise of front-line staff across health and social care. The ICS NHS Body will have the following role:

(a) Developing a plan to meet the health needs of the population within their defined geography;
(b) Developing a capital plan for the NHS providers within their health geography;
(c) Securing the provision of health services to meet the needs of the system population.

15. The ICS Health and Care Partnership will bring together the NHS, local government and partners. Members of the ICS Health and Care Partnership could be drawn from a number of sources including Health and Wellbeing Boards within the system, partner organisations with an interest in health and care (including Healthwatch, voluntary and independent sector partners and social care providers), and organisations with a wider interest in local priorities (such as housing providers). The Government does not intend to specify membership or detail functions for the ICS Health and Care Partnership. Its role will be to bring together systems to support integration and develop a plan to address the systems' health, public health and social needs. The ICS NHS Body and Local Authority will need to have regard to this plan when making decisions.

16. ICSs will be accountable for the outcomes of the health of the population. The Government is exploring ways to enhance the role of the Care Quality Commission (CQC) in reviewing system working.

17. The proposals are designed as a small set of consistent requirements for each system that the partners who make up that system then supplement with further arrangements and agreements that suit them. There is a view that place-based arrangements should be left to the local area to organise. There is a general recognition within the White Paper that 'place' should be consistent with local authority boundaries. In Leicester, Leicestershire and Rutland the agreement is that 'place' will be coterminous with upper tier authority boundaries. The ICS will be expected to delegate functions to place level partnerships and there is a principal of subsidiarity within decision-making processes

18. There will be a duty on the ICS NHS Body to meet the system financial objectives which require financial balance to be delivered. NHS providers with an ICS will retain current organisational financial statutory duties. The ICS Body will not have the power to direct providers although there will be a duty to compel providers to have regard to the system financial objectives.

19. ICSs and NHS Providers will be able to create joint committees. NHS Providers will also be able to create joint committees. Both types of joint committee could include representation from other bodies such as Primary Care Networks, GP Practices, Community Health Providers, Local Authorities or the Voluntary Sector.

20. Guidance will be issued for joint appointments, including for appointments between the NHS and Local Authorities.

Implications for the Health and Wellbeing Board

21. Health and Wellbeing Boards (HWBs) will remain in place (as they have the experience as 'place-based' planners) and will continue to have an important responsibility at place level to bring local partners together, as well as developing the Joint Strategic Needs Assessment and Joint Health and Wellbeing Strategy, which both HWBs and ICSs will have to have regard to. The Government will support HWBs and ICSs, including with guidance, to work together closely to complement each other's roles, and to share learning and expertise.

22. There does seem to be significant overlap between the HWB and the ICS Health and Care Partnership in terms of both membership and function. This will require careful management to ensure that they complement rather than duplicate each other.

Implications for Health Scrutiny

23. The White Paper only makes a brief reference to Health Scrutiny, in relation to the ICS NHS Body taking on the CCG's responsibilities in relation to Oversight and Scrutiny Committees. However, it is worth noting that there is a proposal to introduce a new process for reconfiguration that will enable the Secretary of State to intervene earlier in local reconfiguration changes and enable speedier local decision-making. Statutory guidance on how this process will work will be issued. The current local authority referral process (which in Leicestershire sits with full Council, acting on the recommendation of the Health Overview and Scrutiny Committee) will be removed to avoid creating any conflicts of interest. It is not clear whether the Secretary of State will be required to seek the views of Health Scrutiny prior to making any intervention.

Implications for Adult Social Care

24. The proposals aim to give Adult Social Care a more clearly defined role within the structure of the ICS NHS Body and therefore a greater voice in NHS Planning and Allocation.

25. There will be a requirement for health and adult social care organisations to share anonymised information they hold where such sharing would benefit the system.

26. The Secretary of State will have the power to require data and information from all registered adult social care providers about all services they hold.

27. There will be a new duty for the CQC to assess local authority delivery of adult social care services and a power for the Secretary of State to intervene where a local authority is assessed as failing (this will be the final element of the proposals to be introduced). There is a concern that this could be onerous

and time consuming, particularly if it is similar to the relationship between Ofsted and Children's Services.

28. There will be a power for the Secretary of State to make payments directly to providers (on a case-by-case basis).

29. There will be a legal framework for a 'discharge to assess' model. Discharge to Assess was introduced within the Coronavirus Act and removed the duty to assess people under the Care Act prior to hospital discharge alongside rights to patient choice. Discussions are taking place both nationally and locally to determine how any extension of the Discharge to assess process will be funded. Current arrangements whereby the NHS funds up to the first six weeks of care, pending completion of Care Act Assessments and Continuing Health Care Assessments, are due to expire at the end of March 2021.

30. There will be a standalone legislative power to support the Better Care Fund and separate it from the process of setting the NHS mandate (this is seen as a technical change) but may allow for place-based planning over a medium term rather than on an annual cycle.

Implications for Public Health

31. A greater range of delegation options for Section 7A Public Health Services will be enabled, including the ability for onward delegation of function into collaborative arrangements, such as Section 75 Partnership Arrangements.

32. The proposals will help tackle obesity by introducing further restrictions on the advertising of high fat, salt and sugar foods; as well as a new power for Ministers to alter certain food labelling requirements.

33. The Secretary of State will have the power to directly introduce, vary or terminate water fluoridation schemes (the White Paper suggests that this will remove the burden from Local Authorities).

34. The role of Public Health within the ICS NHS Body has not been clarified. It would be beneficial if the current role that Public Health has with the CCG is continued. Similarly, the role of Director of Public Health in the ICS Health and Care Partnership has not been made clear. This role ought to be crucial.

Implications for Children and Family Services

35. The White Paper is light with regard to children's social care and it is not yet clear whether there will be any implications for the Children and Family Services Department.

Reforming the Mental Health Act: White Paper

36. The Reforming the Mental Health Act White Paper is based upon the independent review of the Mental Health Act undertaken two years ago and is arranged in three parts:

Part 1: Proposals for reform of the Mental Health Act. This brings together plans for legislative change.

Part 2: Proposals and ongoing work to reform policy and practice to support implementation of the new Mental Health Act to improve patient experience.

Part 3: The Government's response to the recommendations made by the Independent Review of the Mental Health Act. This section considers each numbered recommendation in turn.

37. The White Paper introduces four new guiding principles to create a more person-centred approach, to provide more choice and control for patients, to ensure any action has therapeutic benefit and to ensure that compulsion is only exercised when necessary. The new principles are:

- **Choice and autonomy** – ensuring service users' views and choices are respected;
- **Least restriction** – ensuring the Act's powers are used in the least restrictive way;
- **Therapeutic benefit** – ensuring patients are supported to get better, so they can be discharged as quickly as possible;
- **The person as an individual** – ensuring patients are viewed and treated as individuals.

38. The Choice and Autonomy principle will include introducing Advance Choice documents to enable people to set out in advance the care and treatment they would prefer, and any treatments they wish to refuse, in the event they are detained under the Act and lack the relevant capacity to express their views at the time.

39. Patients will have a right to a care and treatment plan which takes into account their wishes and preferences, alongside a new right to refuse treatment, including the right to suffer, whereby patients with the relevant capacity should be able to determine the degree of suffering they are willing to accept.

40. The principle of least restriction will set out clearer and stronger criteria for detention under the Act. This will address concerns in respect to the growth in the overall number of people being compulsorily detained and the disproportionate number of detentions of Black and Minority Ethnic people.

41. The White Paper does not propose to make fundamental changes to the role of Approved Mental Health Professionals (AMHPs). The local authority has a duty to make these available to respond to referrals for compulsory admission.

42. The White Paper proposes new detention criteria which will require that:

(a) The purpose of care and treatment is to bring about a therapeutic benefit;

(b) Care and treatment cannot be delivered to the individual without their detention; and
(c) Appropriate care and treatment is available;
(d) There is a substantial likelihood of significant harm to the health, safety or welfare of the person, or the safety of any other person.

43. The proposed reforms relating to Therapeutic Benefit aim to reduce reliance on inpatient services for people with a learning disability and autistic people, and further embed this principle, to ensure that neither autism nor a learning disability are grounds for detention in and of themselves.

44. The White Paper proposes to replace the current Nearest Relative role with a Nominated Person as part of the personalisation principal. The Nominated Person would continue to carry our Nearest Relative functions but would not be determined by a prescribed list but rather be the person chosen by the patient. Where this function is carried out by the local authority, it would continue to be required to ensure visits are made to the individual and in the case of children and young people to ensure that normal expected parental roles are carried out.

45. There are also proposals to enhance the role of Independent Mental Health Advocates (IMHAs) to give them powers to support completion of care and treatment plans, support advance choice directives, challenge treatments and apply to tribunals. IMHA services are currently funded through local authorities and therefore any increase in their role may increase the funding required to fulfil their duties. Further proposals to expand their role in relation to no detained patients will be subject to future funding decisions

46. The White Paper proposes to give people more opportunity to review and challenge their detention by bringing forward review periods and giving greater access to Mental Health Review Tribunals and increasing the frequency of automatic review by tribunals. In addition, tribunals would be given more power to grant leave, transfer patients and direct access to community services. This would impose an obligation in legislation on health and local authorities to take all reasonable steps to follow the tribunal's decision. If the authority is not able to give effect to the Tribunals' decision, it must provide an explanation to the Tribunal, setting out the steps it took and why it was not possible to follow the decision. This approach will align the Tribunal with that of the Special Educational Needs and Disability Tribunal.

47. As noted in paragraph 42 above, the White Paper makes specific reference to people with a learning disability and autistic people, acknowledging the considerable concern about admission of people with a learning disability and autistic people to mental health hospitals under the Act, where such an admission could become protracted or may not result in someone receiving an appropriate therapeutic intervention.

48. Whilst the proposal is that learning disability and autism would not be grounds for detention for compulsory treatment, detention for purposes of assessment would be allowed for people whose, "behaviour is so distressed that there is a

substantial risk of significant harm to self or others and a probable mental health cause to that behaviour that warrants assessment in hospital".

49. To further reduce the likelihood of admission to hospital the paper proposes the creation of new duties on Local Authority and Clinical Commissioning Group (CCG) commissioners to ensure an adequate supply of community services for people with a learning disability and autistic people. However, there is a recognition that any duty that requires an adequate supply of services to be commissioned for people with a learning disability and autistic people could create new funding requirements if there is not already sufficient supply in place. The White Paper therefore commits to undertake a formal new burdens assessment to establish the implications for Local Government, informed by the consultation responses.

50. The White Paper notes that there are particular sensitivities in delivering mental health services to children and young people alongside the complexities of balancing individual and parental rights and decision-making. However, the provisions set out in the White Paper to have Advance Choice Documents, Care and Treatment Plans and to choose a Nominated Person should apply equally to children and young people. In addition, the intention is to ensure Care and Treatment Plans are provided to all children and young people when they are receiving inpatient care, whether they are under the Act or not. To deliver this, the Government will put on a statutory footing the requirements that already exist for such plans within the national service specification for Tier 4 Child and Adolescent Mental Health Services.

51. Section 117 aftercare was introduced to the Act in 1983 to provide patients with a statutory right to aftercare following discharge from the Act. This provision places a duty on health and social care systems. The review highlighted that there has been a lack of clarity over who is responsible for providing and funding the care and in which locality. This results in delays to providing care to potentially highly vulnerable people. The Government will work in close collaboration with local authorities, the Association of Directors of Adult Social Services, the Association of Directors of Children's Services, NHS England/Improvement and service users to update national guidance so that there is greater clarity on how budgets and responsibilities should be shared to pay for Section 117 aftercare. The Government will also develop a clear statement in the new Code of Practice of the purpose and content of Section 117 aftercare.

Conclusion

52. The Health and Social Care White Paper will have implications for the County Council in terms of changes to adult social care, public health, partnership working arrangements with the NHS and Health Scrutiny. Whilst the move towards collaboration, partnership working and integration is generally to be welcomed, there remain some concerns. These particularly relate to the ongoing role of the Health and Wellbeing Board and to the implications for Health Scrutiny.

53. The Reforming the Mental Health Act White Paper will have potential implications for the County Council in regard to provision of community services where an enhanced offer will be required to maintain people out of hospital, in deployment of resources through greater use of Tribunals and advocacy and to ensure the workforce is fit for the future arrangements.

Equality and Human Rights Implications

54. There are no equality or human rights implications arising from this report.

Background Papers

55. None.