



ADULTS AND COMMUNITIES OVERVIEW AND SCRUTINY COMMITTEE:
10 JUNE 2014

IMPLEMENTATION OF THE CARE ACT 2014

REPORT OF THE DIRECTOR OF ADULTS AND COMMUNITIES

Purpose of Report

- 1 The purpose of this report is to inform the Adults and Communities Overview and Scrutiny Committee about the proposed reforms to Adult Social Care within the Care Act 2014, the implications and risks for the Council and the steps being taken to respond to these challenges.

Policy Framework and Previous Decisions

- 2 The reforms outlined in this report are contained within the Care Act which received royal assent on the 14 May this year.
- 3 The detailed requirements for implementing the Act will be set out in enabling regulations and guidance due to be issued for consultation at the end of May 2014. The implications for current policy plans and strategies will need to be reviewed once that detail becomes available.
- 4 Proposals for reforms to Adult Social Care funding were set out in the consultation "Caring for Our Future". A report on this consultation was considered by the Cabinet on the 15 October 2013.

Background

What does the Act require of local authorities?

- 5 The Care Act, together with supporting regulations and guidance, will replace much of the existing social care legislation and re-establish the current legal basis for adult social care in England.
- 6 With the promotion of individual wellbeing as a fundamental principle, the Act defines the general responsibilities for local authorities with regard to social care, preventing needs for care and support, promoting diversity and quality in the provision of services and how needs should be met.
- 7 The majority of provisions within the Act are due to be implemented from April 2015 including:
 - Provision of information and advice services, introducing, a new requirement for access to financial advice.

- Nationally set eligibility criteria to enable a consistent minimum threshold to access services across local authorities. The intention is this should be set at an equivalent to the current “Substantial” level. Regulations and guidance will specify the approach to assessing eligibility, meeting needs for care and support, support planning and provision of personal budgets.
- The duties outlined above will extend to carers placing them on the same statutory footing as service users.
- Introduces/clarifies local authority duties for providing care and support to people in prison.
- Managing transition from children and young peoples to adult services which includes a right to request an “adults” assessment prior to the 18th birthday. This right also extends to the carers of children and young people.
- Safeguarding adults at risk of abuse or neglect and introducing the legal requirement to establish a Safeguarding Adults Board and to conduct reviews.
- Co-operation and working towards integration with other services such as Health will become a legally enforceable duty.
- Re-establishing the legal basis for direct payments. Part of the proposals include extension of direct payments to residential care, which is being piloted before being rolled out from April 2016 onwards.
- Duties and powers around local care market oversight, intervention in the event of provider failure, including the responsibility to produce a “market position statement” and arrangements for oversight and inspection of the care system by the Care Quality Commission.

Social Care Funding reforms

- 8 The Act also introduces reforms to the funding of social care; the most significant of these are intended to address the recommendations from the report by the Dilnot Commission. The funding reforms are scheduled to be implemented in two phases.
- 9 Phase 1 reforms taking effect from April 2015 will introduce:
 - An integrated nationally set charging regime, replacing the currently separate “Fairer Charging” and “Charging for Residential Accommodation Guidance”. The regime will also encompass financial assessment and charging for services provided to carers under the new duties for them which will come into effect at the same time.
 - Transitional arrangements for current users to manage any adverse impact of moving from locally set charging regimes to the new approach.
 - A universal duty for all local authorities to provide deferred payment replacing the current discretionary offer. This will include provisions to charge interest at a nationally set rate.

- Other enabling processes, such as debt recovery. Although indications so far are that these will consolidate current practice, this will need to be verified when the guidance is issued.
- 10 These provisions will require the authority to review these activities, which it already undertakes and revise the way they are delivered by April 2015.
- 11 Phase 2 reforms taking effect from April 2016 are more significant and include:
- Increasing the current financial thresholds for access to public funding for social care from £23,250 to £27,000 where property is excluded from the assessment and £118,000 when it is included (these figures were put forward in earlier consultation and are yet to be confirmed).
 - A lifetime cap on care costs paid by an eligible service user. The total costs of care (at rates payable by the local authority) will count towards the cap, excluding a nationally prescribed amount for daily living costs in the case of residential care. Once the cap is reached responsibility for funding the person's care (but not daily living costs in a residential setting) will fall to the local authority.
- 12 As well as increasing the costs payable by the authority, this will require changes to be made to our processes and systems; it is also likely to create additional demand for assessment as more people become eligible for public funding.
- 13 The cap will require the introduction of new enabling processes which do not currently exist, these include:
- Care Accounts for every eligible service user which will capture and track eligible costs to be accrued against that person's cap, and enable a forecast to be made of when their cap will be reached.
 - Independent Personal Budgets for those service users arranging their own care, which will define the costs which the local authority would have paid for the person's care, for the purpose of establishing and maintaining their care account.
 - Direct Payments in residential care and relaxation of restrictions over additional payments (top ups). Pilots for direct payments in residential care are taking place from which the detailed approach to this innovation is expected to emerge.

Implications of the Act

- 14 Although there are new provisions within the Act, much of what is included consolidates good practice currently being implemented by the County Council within the new legal framework.
- 15 An initial impact assessment has been conducted to identify where significant change will be required based on currently available information.
- 16 The details of change required will not become clear until draft regulations and guidance have been issued for consultation. At this time these are expected to be

published toward the end of May 2014, at which point there will be an opportunity to respond to the proposals and attempt to influence them, and for detailed analysis and implementation planning to be undertaken.

- 17 Final regulations for the reforms due in April 2015 will not be published until November 2014 at which point plans and assumptions will then need to be confirmed and validated.
- 18 The delivery of the Care Act reforms is being supported by a national programme jointly supported by the Association of Directors of Adult Social Services (ADASS), Department of Health and the Local Government Association (LGA) and key support agencies such as Skills for Care. This programme is responsible for developing the regulations and guidance and a programme of support for implementation.
- 19 In addition to the need to review and revise current practice, processes and systems, the Act introduces other substantial challenges:

Increased demand for eligibility and financial assessment and support planning

- 20 The Act introduces new rights for carers, a nationally set eligibility threshold, and extends the financial thresholds so that more people will be able to access local authority funding, all of which is expected to increase demand within local authority pathways for assessment, care planning and review.
- 21 The introduction of the cap is expected to create a specific and significant pressure of its own. It is anticipated that people currently funding and arranging their own care, will come forward not particularly because they want support from the authority, but in order to establish their eligibility for a care account and to protect their financial position once the cap is introduced in April 2015.
- 22 To manage demand the national programme anticipates that local authorities should begin to assess such people from the autumn of 2015 in advance of the cap taking effect from April 2016.
- 22 The increase will vary depending on the population profile of the local authority and the number of people funding their own care. The County Council, along with other local authorities, are currently quantifying this demand; initial estimates vary between 40% and 100%.
- 24 Current estimates suggest there would be likely to be some 6,500 additional people in Leicestershire currently funding their own care who would be likely to ask for an assessment in order to establish a care account and cap, and approximately 4,000 carers who may ask for an assessment.

Resource implications

- 25 As well as resourcing the additional demands for assessment and support planning and review referred to above, the reforms are intended to transfer more of the responsibility for social care costs from individuals to the taxpayer.
- 26 By 2025/26, national estimates indicate an additional cost to Local Government of £2.64bn. In more affluent areas like Leicestershire, more of the costs which are currently self-funded by service users would pass to the taxpayer. Subsequent independent analysis suggests the national impact assessments may be a substantial underestimation of the true costs which will be incurred.

- 27 The additional care costs arising from the cap are hard to quantify precisely, due to the lack of information about service users who currently fund and manage their own care outside of the social care system and the complexity of the modelling required, which needs to take into account future care costs, duration and levels of care, income levels, property values and revised financial limits for access to public funding
- 28 The proposals will significantly reduce current income from charges, particularly for under 65s many of whom will receive long term free services. There are likely to be more deferred payments for care costs (although the Council will be empowered to charge interest on these) adversely impacting Council cashflow.
- 29 The national programme is developing a national model for the costing the reforms and the County Council is working with other authorities in the region to model the local costs and validate the national approach, however, a definitive approach is yet to emerge.
- 30 Despite this, it is clear that costs will escalate quickly; the current forecasting model developed by the national programme indicates additional costs to the County Council could reach £30m by 2016 and by 2028 could be significantly higher.
- 31 Although the Government has undertaken to fund new burdens there is uncertainty about the formula that will be used to allocate funding to local authorities. Due to the complexity of the necessary modelling and variation in costs between authorities, the formula will need to be very sophisticated. It is by no means clear if all additional costs will be covered. Until this is clearer there is a significant risk of a funding shortfall for the Council.
- 32 These risks have been made plain to the national programme both by this authority, other local authorities, ADASS and the LGA.
- 33 The Director of Corporate Resources and County Solicitor have been consulted on the contents of this report.

Other risks and issues

- 34 National eligibility criteria may increase demand but the Council may receive no additional government funding for this. Early engagement on the proposed criteria revealed that the criteria if applied in practice would actually establish eligibility below this level which was not the intention, whether or not this has been addressed remains to be seen in the forthcoming consultation.
- 35 The Council may face increased exposure to the rise and fall in value of residential properties if there are a greater number of deferred payments secured against property.
- 36 There is some risk around ordinary residence, which could mean the Council funding more service users who are currently funded by other local authorities. This will be dependent on the exact wording of the regulations and guidance.
- 37 Reconciling the need to potentially recruit more staff to meet the additional demand created by the reforms with the need to downsize to meet efficiency requirements creates an increased risk around workforce continuity where key skills will be required. The alternative is to retain skilled staff but this would impact the ability to

deliver existing Medium Term Financial Savings such as the £1m identified for Customer Journey Simplification.

- 38 The Council is planning substantial transformation, budget reductions and increased integration with NHS partners. This creates a risk of inadequate organisational change capacity to deal with simultaneous service changes.

Preparing for the Reforms

- 39 In recognition of the significance of the reforms and associated risks a Project Board was established last autumn chaired by the Director of Adults and Communities to:
- Monitor developments as the Bill passes through Parliament and the House of Lords and supporting guidance emerges and respond to opportunities to influence the process.
 - Identify, and assess the organisational and financial risks arising from these reforms and secure appropriate mitigation.
 - Identify and define what is required to implement the financial reforms set out in the final version of the Care Act.
 - Ensure the reforms to adult social care funding arising from the Care Act are successfully implemented.
- 40 As part of the assessment and planning for the Act, there has been active engagement with other local authorities who share the same challenges, through the ADASS regional network, which has been allocated additional funding from the national programme to establish regional support infrastructure, and more recently through an implementation group within the County Council Network.
- 41 The Bill has been analysed clause by clause to identify those aspects which can be addressed through minor operational changes, those that can be dealt with by changes that are already planned and those which represent a major change where a substantial response will be required.
- 42 This analysis suggests that the many of the changes can be accommodated within the service or currently planned work with appropriate refinement. However, there are several changes which require a significant response.
- 43 The changes requiring a significant response identified so far are:
- Those relating to eligibility assessment and care planning for service users and carers.
 - Portability of care planning and care accounts when service users move between authorities.
 - The funding reforms.
- 44 These assessments will need to be reviewed when the draft regulations and guidance becomes available. The systematic examination of the consultation guidance by subject matter experts has been planned, to inform the preparation of a consultation response, identify any new risks and to inform detailed preparation and estimation.
- 45 In response to those risks already identified, two specific projects are being established as part of the emerging corporate Transformation Programme:

- **Adult Social Care Customer Journey Simplification**, which will address the implications of increased demand through the Care Pathway, ensuring it is compliant with the emerging regulations and guidance whilst offering an improved customer experience.
- **Adult Social Care Funding Reform**, which will support the implementation of the funding reforms required in April 2015 and 2016 respectively. Assessing and modelling the financial impact of the reforms will form part of this.

- 46 These projects along the integration and other projects within the Transformation Programme will be supported by enabling projects delivering the required changes to business systems, communication and engagement with customers, and workforce development.
- 47 Detailed project planning has commenced on these projects in accordance with the Transformation Programme approach.
- 48 Other changes within the Act will be addressed within existing projects and workstreams within the Department. A temporary Head of Service is being recruited to take the lead on these aspects and a specific work plan for the necessary changes will be developed based on the review and analysis of the requirements within the draft regulation and guidance.
- 49 As part of the preparations work has already commenced on:
- Modelling the financial implications of the Act and estimating demand levels. This is a complex piece of work. Finance and business staff are working with the national leads to arrive at reliable estimates.
 - Developing a financial advice pathway.

Conclusions

- 50 The requirements in the Care Act will result in significant change and risk for Adult Social Care and the whole Council. The detailed implications will emerge as the national programme for implementation develops and are being kept under review.
- 51 The major risks and challenges the Act presents are fully recognised and being addressed through the Transformation Programme and Adults and Communities Department's own work programme.
- 52 Ultimately local implementation is dependent on the timely and effective delivery of the national programme.

Background Papers

Report to the Cabinet: 15 October 2013 – Response to the Government Consultation 'Caring for our Future':

[HTTP://POLITICS.LEICS.GOV.UK/PUBLISHED/C00000135/M00003635/AI00035919/\\$CARINGFOROURFUTURERESPONSETOTHEGOVERNMENTSCONSULTATION.DOCA.PS.PDF](http://POLITICS.LEICS.GOV.UK/PUBLISHED/C00000135/M00003635/AI00035919/$CARINGFOROURFUTURERESPONSETOTHEGOVERNMENTSCONSULTATION.DOCA.PS.PDF)

Fairer Care Funding - The report of the Commission on Funding of Care and Support:

<http://webarchive.nationalarchives.gov.uk/20130221130239/https://www.wp.dh.gov.uk/carecommission/files/2011/07/Fairer-Care-Funding-Report.pdf>

'Caring for our future: Consultation on what and how people pay for their care and support', Department of Health, published 18 July 2013:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/239393/CONSULTATION_CaringForOurFuture_acc.pdf

Care Act 2014:

http://www.publications.parliament.uk/pa/Acts/IAct/2013-2014/0001/IAct_2013-20140001_en_1.htm

Circulation under the Local Issues Alert Procedure

None.

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Relevant Impact Assessments

Equal Opportunities Implications

- 53 The national criteria and new funding system will offer greater clarity for people about their entitlement for support and what they have to pay. There will be free care for people who have eligible social care needs before the age of 25 in recognition of their considerably reduced opportunity to earn and save money. There will also be a lower cap on care costs for adults of working age who have eligible social care needs, on the same basis. Carers will have the same legal entitlement to assessment of their needs and support where found eligible as service users.
- 53 Equalities Impact Assessments for various aspects of the Act will be completed by appropriate Adults and Communities staff to inform the process of implementing the reforms in Leicestershire.

Partnership working and associated issues

- 54 The Care Act requires local authorities and other relevant bodies in particular the NHS, to co-operate and integrate services. This forms a fundamental part of the council's Transformation Programme and the approach already developed in the Department.