

Report of Director of Adult Social Services

Report to Executive Board

Date: 16th July 2014

Subject: Care Act (2014)

Are specific electoral Wards affected? If relevant, name(s) of Ward(s):	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Is the decision eligible for Call-In?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: Appendix number:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

Summary of main issues

The Care Act (2014) passed into law on the 14th May 2014 and represents a fundamental shift in adult social care services and redefines the relationship between the state, local authorities, the citizen, service users and carers. The Act also converts many existing Council's adult social care powers and policies into mandatory duties. It will be implemented in a phased approach with the care and support reforms to be implemented from 1 April 2015 followed by financial reforms from 1 April 2016. The 'Better Lives' vision for the delivery of social care and support is the Council's commitment to ensuring that Leeds is the best city for people with care needs. The reforms set out in the Act are aligned with the Council's successful strategy set out in the Better Lives programme.

The Act emphasises the continuing importance of independence, choice, prevention and wellbeing. The key focus of the Act is to empower individuals through personalised care and developing care services that best fit around their lives. This in turn will help prevent, reduce or delay the need for statutory care services. There is also an expectation that adult social care services increasingly integrate services with local health partners. These themes are all central to the transformational programme set out in Better Lives.

Recommendations

The Executive Board is recommended to:

- Note the provisions of the Care Act (2014) and the potential impacts for Leeds.
- Note progress made to date in preparing for the reforms.
- Note the initial Equality Screening and the requirement for an Equality Impact Assessment.
- Request that Health Scrutiny oversee the consultation and engagement requirements including the Equality Impact Assessment.
- Agree to receive a further progress report in March 2015.
- Note that the Chief Officer, Social Care Reforms is the responsible officer in this matter.

1 Purpose of this report

- 1.1 This report sets out a summary of the key elements of the Care Act and considers the implications of the new burdens and statutory responsibilities for the Council and its partners in respect of care and support.

2 Background information

- 2.1 On the 8th May 2013, the Government announced in the Queen's Speech that it would be introducing a Bill, which seeks to reform the way in which long term care is paid for and ensure that the elderly do not have to sell their homes to meet their care costs. The Care Act (2014) sets out a fundamental redesign of the adult social care core services. It redefines the relationship between the state, local authorities, the citizen, service user and carers.
- 2.2 Adult Social Care Services consist of a range of services to support people (and their carers) who require help as a result of illness, disability, old age or poverty. Many services are often commissioned or provided jointly with health, independent and voluntary sectors. Services may include: helping people to live independently in their own homes for as long as possible; helping carers; helping people with learning disabilities and arranging placements in a care home. Other services include providing equipment, a range of community services including day centres, financial support, information and advice. Entitlement to services is determined through eligibility and assessment.
- 2.3 The Care Act delivers the modernisation vision set out in the Care and Support White Paper, *Caring for our Future: reforming care and support* (July 2012). In the reformed adult social care system, the Government expects people dealing with adult social care to be able to articulate clear outcomes from their experience through "I" statements:
- "I am supported to maintain my independence for as long as possible";
 - "I understand how care and support works, and what my entitlements and responsibilities are";
 - "I am happy with the quality of my care and support";
 - "I know that the person giving me care and support will treat me with dignity and respect";
 - "I am in control of my care and support and I have greater certainty and peace of mind knowing about how much I will have to pay for my care and support needs".
- 2.4 The Care Bill was granted Royal Assent on the 14th May 2014. This was followed by a consultation exercise on the draft statutory regulations and guidance which were published on the 6th June 2014. The consultation exercise ends on the 15th August 2014 and the final set of guidance is expected to be published in October 2014. The Government intends to implement the Care Act in two stages, from 1 April 2015 the care reforms and then implement financial reforms (including the Care Cap) in the following year, 1 April 2016.

3 Main issues

The National Context

- 3.1 There have been a number of national reports which have highlighted the challenges in care services. They include: the King's Fund report- "Making our health and care systems fit for an ageing population"; Age UK- "Care in Crisis" and National Audit Office- "Adult Social Care in England: Overview". In summary, they reflect the crossroads that adult social care services are at with the greater interdependence of service provision with local health partners and increasing financial pressures across health and social care. Advancements in medicine and technology are increasing life expectancy along with increased expectations

for safe, quality services that fit around people's lives. Rising care needs of the elderly population resulting from long term and multiple health conditions and disabilities are adding to pressures in health and social care. This has been exacerbated by the changes to welfare benefits for people with disabilities and their carers which will put further strain on the part of vulnerable people who pay for their own care and those who undertake informal care. In addition, the way in which care is being delivered is changing with increasing numbers of people exercising greater choice and control over their care arrangements and directing care resources.

MAIN PROVISIONS OF THE CARE ACT (2014)

3.2 The Care Act (2014) consists of three key sections which are:

- A new legal framework for adult social care services reform, which delivers the modernisation vision set out in the Care and Support White Paper, *Caring for our Future: reforming care and support* (July 2012).
- The reform of quality regulations and development of care standards (including the introduction of Ofsted-style ratings) for hospitals in response to the Francis Enquiry, which reviewed and made recommendations in respect of failures in hospital care at the Mid Staffordshire hospital; and
- The establishment of new training and research non-departmental public sector bodies, Health Education England (HEE) and the Health Research Authority (HRA).

3.3 This report primarily concerns the section which seeks to reform and modernise adult social care services and the development of care standards as they relate to our health partners. The Care and Support part of the Act sets out a series of new duties and powers for Councils with adult social care responsibilities. In summary they include:

The promotion of well-being duty

3.4 Adult social care is now to be organised around the well-being of the individual. In effect, 'well-being' is the single unifying purpose around which all adult social care services are to be arranged.

The prevention duty

3.5 This duty seeks aims to address a key finding in the White Paper in that too often the adult social care system only reacts to a crisis. The Council will have a duty to prevent, reduce or delay the need for on-going care and support. There should no longer be an assumption that all care pathways lead inevitably to institutionalised acute care.

Assessments & Eligibility

3.6 A national eligibility criteria will be set where a minimum threshold will determine the care needs that will make an individual eligible for the Council's support. Assessments will be revised and expanded, which will mean that there will be a requirement to re-assess people who move into Leeds from another area (principle of portability); assess a large number of self-funders (people who have means to fund their own care); and have a duty to carry out more carers' assessments under the new Carers' eligibility criteria.

Prisoners

3.7 The Act establishes that the local authority in which a prison, "approved premises" or bail accommodation based will be responsible for assessing and meeting the care and support needs of the offenders residing there if they meet the eligibility criteria.

Carers

- 3.8 The Act places Carers on an equal footing with the people they care for. Carers' entitlements and rights are to be enhanced in law with a duty to provide services are to be strengthened following a determination of eligibility under a new Carer's eligibility criteria;

Charging and the lifetime cap on care costs

- 3.9 A lifetime cap on care costs will be put in place for people receiving the State Pension which it is proposed is set at £72,000 after which the Council will meet the costs of care. The cap will consist of care costs only and will not include accommodation costs. There will be a duty on the part of the Council to provide a care account which records care costs and track progression towards the care cap.
- 3.10 The "asset threshold" (this is an individual's collective worth e.g. house, savings, benefits and pension) for those who in residential care, beyond which no means-tested help is given, will increase from £23,250 to £118,000. In effect, a more generous means test.

Duty to Promote Integration

- 3.11 The integration agenda maintains a strong focus in the Act with the introduction of a duty on the Council to carry out its care and support responsibilities with the aim of integrating services with local NHS partners.

Self-funders

- 3.12 The Act introduces a duty on the part of the Council to meet the needs of self-funders (those people who have means to fund their own care) if they request assistance. The duty to provide advice and information set out below extends to people who have means and are planning how best to meet their future needs care.

Advice and Information

- 3.13 The Council has now a duty to advise and inform people so that they can better plan for their future care needs, gain a greater understanding of the adult social care system and improve their access to services.

Choice and Control

- 3.14 Personal budgets will be enshrined in law for the first time and create a duty on the part of the councils to include them in a person's care and support plan.

Shaping Care Markets

- 3.15 The Act places new duties on local authorities to facilitate and shape their care market for adult care and support as a whole. Councils must meet the needs of all people in their area who need care and support, whether arranged or funded by the state or by the individual themselves.

Adults Safeguarding

- 3.16 Safeguarding arrangements will be strengthened by placing adults safeguarding boards on a statutory footing and creating a legal duty on the part of the Council to investigate suspected abuse when an adult is deemed to be at "risk of harm".

Deferred Payments

- 3.17 The act extends deferred payment agreements which allow people to meet their own costs without having to sell their homes in their lifetime regardless of eligibility.

Other parts of the Act set out:

- 3.18 Duty of Candour: New duty of Candour will be introduced which imposes on providers and health partners a requirement to provide information where incidents occur concerning the safety of individuals;
- 3.19 Single Failure Regime: Single Failure Regime for all health trusts that deal with financial and care standards;
- 3.20 Trust Special Administrators: Trust Special Administrators powers are to be extended (who are appointed to run failing health providers and make recommendations about future services) so that recommendations can be made in respect of neighbouring providers.

4 Key challenges and risks

- 4.1 The scale and complexity of implementing the Care Act presents the Council with key challenges and risks as well as opportunities. The Council is working with partner authorities both nationally and regionally to address the challenges and mitigate the risks. In addition, Adult Social Care Services has developed a nationally and regionally recognised Programme Management approach to implementing the reforms. This will enable a more effective delivery of change programme. The main challenges and risk are set out below.

5 Estimating the costs of implementation and the additional responsibilities

- 5.1 Ensuring that the reforms are adequately funded presents the Council with a significant risk. The Government has stated that it is committed to funding the reforms and has allocated £470m nationally. The Local Government Association and ADASS (Association of Directors of Adult Social Services) believe that that the reforms will cost significantly more than the original estimates. They are in direct dialogue with the Department of Health revisiting the original financial impact assessment of the new burdens. A profile of the resources is set out in the Resources and Value for Money section below.
- 5.2 It is recognised that the poor local government settlement has taken its toll on the Council's ability to be clear and transparent in regard to the delivery of the new burdens set out in the Care Act. There is a notional allocation in the Better Care Fund for Leeds of £3.395m for local implementation. Clearly, within the current financially challenging climate Adult Social Care Services will be required to take a "save to invest" approach. This will be challenging locally to Leeds and nationally to implement the care bill reforms within the notional allocation set out in the Better Care Fund.
- 5.3 The Council cannot be confident at this stage that the costs of implementing the legislation have been properly identified, particularly in light of the fact that the secondary guidance and regulations will only be finalised in October 2014. The scale and pace of the adult social care reforms means that the implementation will be highly sensitive and dynamic. In terms of mitigation of the risks, financial impacts will be closely monitored as will the full detail of the guidance once finalised. Budget assumptions will be factored into budget planning processes and reported to members as appropriate.

The Scale and Pace of Change

- 5.4 The Leeds health and social care community has long since recognised that a holistic approach to change is critical. The first phase of care reforms must be implemented by 1 April 2015 at scale and pace within the Better Lives Programme in a period of unprecedented change. Our health partners in particular will have a key role to play in helping to manage the demand of the increased range of responsibilities and additional statutory duties. Key stakeholders such as Leeds Community Health, Clinical Commissioning Groups, local GPs and LTHT in Leeds will have a key role to play as the work to integrate services progresses. In addition, local providers of services including the independent and third sectors will need to be actively involved in helping to communicate the changes and co-producing a reformed “adult social care” offer in Leeds. To address this challenge existing programmes of work across the Better Lives strands will be reviewed to ensure that the new legal duties are effectively discharged. A consultation and engagement plan has been developed to ensure that key partners are actively involved in the reforms.

Carers

- 5.5 One of the most important and welcomed reforms set out in the Act is the strengthening of carers rights to both assessment and entitlement to services. It is recognised in Leeds that some 71,600 Carers provide an estimated 1.5 million hours of unpaid care across the City. In Leeds, 57.8% of unpaid carers are female and 42.2% are male which reflects the national picture. Clearly the legal entitlement to assessments and resulting services through care packages for carers is welcomed. However, the reforms will have a significant impact on the City. Early estimates indicate that in Leeds, this could mean an extra 62,000 assessments for the Council. Carers Leeds are actively involved in the Council’s to help the Council assess the impact and financial implications of these reforms.

Advice and Information

- 5.6 The Care Act confirms that wellbeing is now the unifying purpose around which adult social care is organised. In the immediate term, a communication strategy will be required for the wider public, service users and their carers, key health and social care stakeholders to understand the reforms and what it means for them. The Council will have a duty to provide advice and information to help people navigate the care system regardless of whether people meet the eligibility criteria including those people who have means to fund their own care. Advice and Information is considered to be a priority area and the Assistant Chief Executive for Citizens and Communities is actively involved with Adult Social Care Services in planning for this change.

Workforce implications

- 5.7 There will be significant workforce implications resulting from the reforms. Staff within adult social care services will need to be educated and retrained once the required changes in working practices are more clearly understood. The reforms may require staff to adopt new models of care delivery to help manage the demand of increased activity levels but also deliver preventative and personalised approaches to care arrangements.

6 Corporate Considerations

Consultation and Engagement

- 6.1 An initial Consultation, Engagement and Communication Plan has been developed. Key stakeholders have been identified and met with as a preliminary consultation to a full impact assessment. The full impact assessment plan will need to be finalised following publication of detailed secondary guidance and regulations.

7 Equality and Diversity / Cohesion and Integration

- 7.1 An Equality Screening has been completed and is attached at Appendix 1 and this screening has identified the need for a full Equality, Diversity, Cohesion and Integration Impact Assessment based on the publication of detailed secondary guidance and regulations.

8 Council Policies and City Priorities

- 8.1 The delivery of the Better Lives Programme with its core aim of helping local people with care and support enjoy better lives is one of the Best Council Plan 2013-17 objectives. The Better Lives focus is on giving choice and helping people stay living in their own home, joining up health and social care services and creating the right kind of health and social care support. The Better Lives Programme continues to drive whole systems change within the Leeds health and social care economy and is aligned with the Care Act reforms. It is clear that the reforms will require the Council and its local health and care partners within the City to increase the scale and pace of its transformation programme notwithstanding funding pressures.
- 8.2 The Care Act implementation programme will address the following City priorities with a particular impact in respect of health and wellbeing, business, and communities. The reforms seek to:
- Give people choice and control over health and social care services through personalisation provisions;
 - Support the sustainable growth of the Leeds' s economy in terms of stimulating innovation in the care sector and
 - Stimulate community empowerment and cohesion through building on the Neighbourhood Networks and encourage the development of prevention schemes.

9 Resources and value for money

- 9.1 The Government has identified a national allocation of £470m to fund the Care Act reforms. This amount has come from existing local government and CCG spending allocations. Locally in drawing up the final Better Care Fund (BCF) submission for 15/16, the figures that have been agreed and approved by the CCGS and the Authority are £2.651m and £0.744m respectively making a total of £3.395m. In addition, the Government announced an allocation of £23m nationally (£125k for Leeds) for 2014/15 for implementation costs.
- 9.2 A breakdown of the national resources and the allocation for Leeds is set out below:
- £135m (circa £1.9m for Leeds), which is an allocation to the Better Care Fund in 2015/16 from Leeds Clinical Commissioning Groups transfer;
 - A capital element of £50m (circa £0.7m for Leeds), which again will be an allocation to the Better Care Fund in 2015/16. This in effect comes from the Community Capacity Grant, currently received by Leeds City Council;
 - The remaining £285m (circa £3.9m for Leeds) is included in the council's provisional revenue settlement for 2015/16; and
 - £23m which the DOH has allocated in the Care Bill Implementation Grant, 2014/15 (£125k for Leeds).
- 9.3 In the absence of final detailed secondary guidance and lack of certainty, Adult Social Care is developing "worst case" and "best case" scenarios. In particular, the key question being how much of the latent demand (i.e. Carers and self-funders) will present needs to adult social care services and in turn, how many will receive services in the form of care packages .

- 9.4 In respect of 2016/17 funding and costs onwards, it is extremely difficult to estimate what the financial impact of these could be. The funding for 2016/17 will be dependent on the outcome of the next Comprehensive Spending Review. In addition, in respect of implementing the care cap costs, there is also considerable uncertainty. This is because it depends on the level of presenting need. In conjunction with other local authorities, we have been involved nationally in the "Surrey Model" projection and dependent upon the level of presenting need, the cost predicted by that model could be in the region of an extra £16m in 2016/17 rising to £38m by year 2035.
- 9.5 At its meeting on the 16th July, the Executive Board is also being asked to approve a capital scheme of £1.652m to implement the information and technology changes required to support the delivery of the Care Act (2014).

10 Legal Implications, Access to Information and Call In

- 10.1 There are significant legal implications for the Council arising resulting from the consolidation of adult social care law which dates back to the National Assistance Act (1948). Legal Services have been working closely with Adult Social Care Services and assisted in early planning for the reforms. In particular, they will be closely involved in a legal impact assessment of the final secondary guidance and regulations published in October. The Executive Board will be aware that the Children and Families Act (2014) is also being implemented at the same time as the Care Act (2014). There are some important common areas across the two acts consisting of transitions (young people with disabilities aged 14-25) and personal budgets. These areas are being addressed by Adult Social Care Services and Children's Services jointly.

11 Risk Management

- 11.1 The Better Lives Programme and associated projects have been included within the Council's Corporate Risk Register. The Care Act reforms are aligned with the Better Lives Programme and will be tracked, reported and managed as the detailed guidance is finalised.

12 Conclusions

- 12.1 The Care Act (2014) represents a generational change in adult social care services and re-defines the relationship between the state, local authorities, the citizen, service users and carers. It will challenge the Council and everyone who works in the sector and service users and carers to think differently about care services. The singly unifying purpose around which Adult Social Care Services is organised will be wellbeing. The themes in respect of prevention, personalisation and independence which are aligned with the Better Lives Programme will become statutory duties.
- 12.2 Whilst the reforms set out in the Act are welcomed, the new burdens and responsibilities present significant challenges and risks as well as opportunities for the Council. They consist of financial risks, the scale and pace of the implementation and additional demand through new carers and assessment responsibilities. This means that that the implementation will be highly sensitive and dynamic. In order for Adult Social Care Services to successfully implement these reforms to the timescale set by the Government, the Council and its partners in the health and social care sectors will need to be closely involved in planning and delivery of the new statutory duties.

13 Recommendations

- 13.1 The Executive Board is recommended to:
- a) Note the provisions of the Care Act (2014) and the potential impacts for Leeds.

- b) Note progress made to date in preparing for the reforms.
- c) Note the initial Equality Screening and the requirement for an Equality Impact Assessment.
- d) Request that Health Scrutiny oversee the consultation and engagement requirements including the Equality Impact Assessment.
- e) Agree to receive a further progress report in March 2015.
- f) Note that the Chief Officer, Social Care reforms is the responsible officer in this matter.

Background documents¹

None.

¹ The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.