

# Leeds Health & Wellbeing Board

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**Report of:** Director of Adult Social Services, Leeds City Council

**Report to:** Leeds Health and Well Being Board

**Date:** 16<sup>th</sup> July 2014

**Subject:** Care Act (2014)

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 type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If relevant, Access to Information Procedure Rule number:		
Appendix number:		

## Summary of main issues

- The Care Act (2014) passed into law on the 14th May 2014. It represents a fundamental shift in adult social care services and redefines the relationship between the state, local authorities, the citizen, service users and carers. Wellbeing is the central theme in the Act. "Wellbeing" is the single unifying purpose around which all adult social care services are to be arranged. The Act establishes a legal duty on local authorities in that they must promote wellbeing when carrying out any of their care and support functions. The Act naturally aligns with the aspirations of the Health and Wellbeing Board through priorities set out in the Joint Health and Wellbeing Strategy.
- The Act also converts many existing local authority 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 Act emphasises the continuing importance of independence, choice, prevention and wellbeing. The key focus here is to help prevent, reduce or delay the need for statutory care services. The Health and Wellbeing Board will be aware that these themes are all also central to the Better Care Fund and the existing health and social care transformation programme.
- There is also an expectation set out in the Act that adult social care increasingly integrate services with local health partners. Leeds has already established an excellent national reputation in this regard by adopting a whole system approach to integration. The focus has very much been on the real-world experiences of the citizens in Leeds, using them to inform our objective of improving health and social care outcomes for adults, children and young people. This in turn is helping to deliver the ambition in Leeds to be the best city for health and wellbeing. In recognition of this, Leeds was awarded pioneer status in December 2013. The Care Act (2014) with its central principle of wellbeing will make a positive contribution to the strategic aim in Leeds of creating a sustainable and high quality health and social care system.

## **Recommendations**

The Health and Wellbeing Board is asked to:

- Note the provisions of the Care Act (2014) and their contribution to the priorities set out in the Joint Health and Wellbeing Strategy and the creation of a high quality sustainable health and social care system in Leeds.
- Note progress made to date in preparing for the reforms.
- Assure itself that clear plans are in place to implement the duties of the Act across the Health and Wellbeing Partnership.
- Note that the Act is required will be required to be implemented at a time of unprecedented financial challenge.
- Note the initial Equality Screening and the requirement for an Equality Impact Assessment.
- Agree to receive further progress updates, as and when there are clear implications for the Health Partnership in Leeds.

## **1 Purpose of this report**

- 1.1 This report sets out a summary of the key elements of the Care Act (2014) and considers the implications of the new burdens and statutory responsibilities for the Leeds Health and Wellbeing Board.
- 1.2 In particular, it considers how the Care Act (2014) will help to achieve the aspirations and priorities set out in the Joint Health and Wellbeing Strategy. The report also sets out the contribution that the Act will make to the city- wide outcome of delivering a high quality, sustainable health and social care system.

## **2 Background information**

- 2.1 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.
- 2.2 On the 8<sup>th</sup> 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 re-design of the adult social care core services. It redefines the relationship between the state, local authorities, the citizen, service user and carers. "Wellbeing" is intended to be the single unifying purpose around which all adult social care services are to be arranged
- 2.3 The Care Bill was granted Royal Assent on the 14<sup>th</sup> May 2014. This been followed up with a public consultation exercise on the draft statutory regulations and guidance which were published on the 6<sup>th</sup> June 2014. The consultation exercise ends on the 15<sup>th</sup> August 2014 and the final set of guidance is expected to be published in October 2014. A series of national consultation events are being organised by the Department of Health. A regional event in York was held on 25 June 2014 and was attended by key stakeholders from Leeds including Healthwatch Leeds and Carers Leeds. 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**

- 3.1 The Care Act (2014) consists of three key sections which are:
  - A new legal framework for adult social care services reform, which delivers the Government's 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).

- 3.2 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 local authorities with adult social care responsibilities. In summary they include:

The promotion of well-being duty

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

The prevention duty

- 3.4 This duty seeks aims to address a key finding in the Care and Support White Paper, *Caring for our Future: reforming care and support* (July 2012) 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

- 3.5 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.
- 3.6 The recently published draft guidance and regulations states that local authorities must consider whether there is a significant impact on an individual's wellbeing when they decide who will be eligible for services.

Prisoners

- 3.7 The Act establishes that the local authority in which a prison, "approved premises" or bail accommodation is located, 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. 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 pathways 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 care needs.

### Advice and Information

- 3.13 The Council now has 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 council 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 also facilitate an adequate range and sufficiency of care and support services to 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.

## **4.0 Key Implications and Risks**

4.1 The Care Act recognised that “wellbeing” is a broad concept, and it is described as relating to the following areas:

- Personal dignity (including treatment of the individual with respect);
- Physical and mental health and emotional wellbeing;
- Protection from abuse and neglect;
- Control by the individual over day-to-day life (including over care and support provided and the way it is provided);
- Participation in work, education, training and recreation;
- Social and economic wellbeing;
- Domestic and economic wellbeing;
- domestic, family and personal relationships;
- suitability of living accommodation;
- the individual’s contribution to society.

### **Estimating the costs of implementation and the additional responsibilities**

4.2 Ensuring that the reforms are adequately funded presents the Council and consequently its partners 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 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 responsibilities. A profile of the resources is set out in the Resources and Value for Money section below.

4.3 It is recognised that the reduced 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.

4.4 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 Joint Health and Wellbeing Strategy**

- 4.5 It is clear that the Care Act with its key theme of wellbeing will make a positive contribution to the priorities set out in the Joint Health and Wellbeing Strategy. The definition of wellbeing set out in the Act together with its practical impact will greatly assist in the delivery of the key priorities. The themes of empowering individuals through personalised care and developing care services that best fit around their lives. This in turn will help to prevent, reduce or delay the need for statutory care services. 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”.

These are very much aligned with the five outcomes set out in the Joint Health and Wellbeing strategy.

- 4.6 The main provisions in the Care Act (2014) set out above will make a positive contribution to the achievement of the priorities set out in the Joint Health and Wellbeing Strategy. Of particular relevance are the priorities relating to: the number of people supported to live in their own home; more people recover from ill health and ensure people cope better with long term conditions; ensure that people have voice and influence in decision making and increase the number of people who have more choice and control over their health and social care services.

## **The Scale and Pace of Change**

- 4.7 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 Healthcare NHS Trust, Clinical Commissioning Groups, local GPs and Leeds Teaching Hospitals Trust in Leeds will have a key role to play as the work to integrate seamless pathways of 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. A consultation and engagement plan has been developed to ensure that key partners are actively involved in the reforms.
- 4.8 The Council is working with partner authorities both nationally and regionally to address the challenges of implementing the Act across Health and Social Care partner organisations. In addition, the Council has developed a nationally and regionally recognised programme management approach to implement the reforms. This will provide the Council and its partners with a high degree of assurance that effective plans are in place to deliver the reforms, and that these will be monitored effectively.

## **Advice and Information**

- 4.9 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**

- 4.10 There will be significant workforce implications resulting from the reforms. Staff within adult social care services will need to be provided with training and advice 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. As a result, the transformational change programme and in particular, the wider development of joint workforce such as integrated health and social care teams will need to be adapted to ensure partners are cognisant and compliant with the Act's requirements.

## **5.0 Health and Wellbeing Board Governance**

### **5.1 Consultation and Engagement**

- 5.1.1 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.
- 5.1.2 Briefings on the Care Bill have been provided to the Transformation Board and the Integrated Commissioning Executive. Plans are in place to present further reports following the granting of royal assent in May 2014 and, in particular, the implications of the recently published guidance across the Health and Wellbeing Partnership

### **5.2 Equality and Diversity / Cohesion and Integration**

- 5.2.1 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.

### **5.3 Resources and value for money**

- 5.3.1 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.
- 5.3.2 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).

5.3.3 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 .

5.3.4 In respect of 2016/17 costs onwards, when the care cap is implemented it is extremely difficult to estimate what the financial impact of this could be. 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” 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.

## **5.4 Legal Implications, Access to Information and Call In**

5.4.1 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.

## **5.5 Risk Management**

5.5.1 The Better Lives Programme and associated projects have been included within the Council's Corporate Risk Register. The Care Act (2014) reforms are aligned with the Better Lives Programme and will be tracked, reported and managed as the detailed guidance is finalised.

## **6 Conclusions**

6.1 The Care Act (2014) is one of 5 key strategic drivers underpinned by the Integrated Health and Social Care Pioneers Programme. Alongside the Better Care Fund, the NHS Call to Action, The Children and Families Act (2014) and Health Innovation it which will enable partners in Leeds to go “further and faster”. It represents a generational change in adult social care services and re-redefines the relationship between the state, local authorities, the citizen, service users and carers. The singly unifying purpose around which Adult Social Care Services is organised will be wellbeing. It is clearly not without risks to the Authority and its partners, particularly of a financial nature.

6.2 The Act naturally aligns with the aspirations of the Health and Wellbeing partners around the city through priorities set out in the Joint Health and Wellbeing Strategy. It will make a major contribution to the priorities set out in the strategy and the wider transformational change programme within Leeds.

- 6.3 Whilst the reforms set out in the Act are welcomed, the new 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 the implementation will be highly sensitive and dynamic. In order for the Council to successfully implement these reforms to the timescale set by the Government, health and social care partners will need to be closely involved in planning and delivery of the new statutory duties. An integrated approach to the Act's implementation will help Leeds to achieve its key objective of a high quality sustainable system within a significantly reduced financial envelope.

## **7 Recommendations**

The Health and Wellbeing Board is asked to:

- Note the provisions of the Care Act (2014) and their contribution to the priorities set out in the Joint Health and Wellbeing Strategy and the creation of a high quality sustainable health and social care system in Leeds.
- Note progress made to date in preparing for the reforms.
- Assure itself that clear plans are in place to implement the duties of the Act across the Health and Wellbeing Partnership.
- Note that the Act is required will be required to be implemented at a time of unprecedented financial challenge.
- Note the initial Equality Screening and the requirement for an Equality Impact Assessment.
- Agree to receive further progress updates as and when there are clear implications for the Health Partnership in Leeds.