

24 September 2014

To: All Members of the Health and Wellbeing Board

Dear Member,

Health and Wellbeing Board - Tuesday, 30th September, 2014

I attach a copy of the following report for the above-mentioned meeting which were not available at the time of collation of the agenda:

13. Implications of the new Care Act 2014 (PAGES 1 - 12)

Yours sincerely

Ayshe Simsek
Principal Committee Co-ordinator

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Report for:	Health and Wellbeing Board 30 September 2014	Item Number:	
Title:	Implications of the new Care Act 2014		
Report Authorised by:	Beverley Tarka Interim Director Adult Social Services		
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Ward(s) affected:	ALL	Report for Key/Non Key Decisions:	N/A

1. Describe the issue under consideration

- 1.1 The Care Act 2014 modernises the law so that people's wellbeing is at the heart of the care and support system. Duties under the Act come into effect in April 2015 and will be supported by statutory and practice guidance.
- 1.2 The Act has been drawn up to reform the law relating to care and support for adults and the law relating to support for carers, to make provision about safeguarding adults from abuse or neglect, to make provision about care standards, to establish and make provision about Health Education England, to establish and make provision about the Health Research Authority, and for connected purposes. Details of the main provisions of the Act are set out in Appendix 1 to this briefing.

2. Recommendations

- 2.1 The Care Act offers both significant challenge and significant opportunity for Haringey. Its core objectives align well with the Corporate Plan's focus on improving the customer experience, providing early intervention and prevention and delivering in a joined up way with our partners and its



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successful implementation will require a corporate approach aligned effectively with other change programmes in place across the Council.

- 2.2 The impact of the Care Act will extend more widely than adult social care and it is another major corporate programme of change which will be running alongside and possibly as part of health and care integration and the Better Care Fund; implementation of the SEND reforms in the Children and Families Act; Customer Services transformation; redesign of services for Working Age Adults as part of the approach to budget reductions; refocusing of activity on prevention and early intervention and probably others.

3. Background information

- 3.1 The Care Act takes forward the recommendations of the Law Commission report on adult social care published in 2012 which found that existing legislation is outdated and confusing. The Act creates a single modern piece of law for adult care and support, replacing more than 12 separate pieces of legislation, much of it dating back to the National Assistance Act 1948, into a single statute.
- 3.2 The principle that the overall wellbeing of the individual is at the centre of their care and support lies at the heart of the Act. Individuals' needs, views, feelings and wishes should be considered in all aspects of their wellbeing from physical and mental health, through dignity and respect to control over their daily needs, access to employment, education, social and domestic needs and the suitability of their accommodation.
- 3.3 The Act creates a general duty to promote the integration of care and support with local authorities, health and housing services and other service providers to ensure the best outcomes are achieved for the individual.
- 3.4 The core principles of the Act have strong sector and stakeholder support but there remain some critical issues for implementation, both nationally and locally:
 - Workforce: ensuring capacity and skills to deliver reforms;
 - IT: care records, new charging, deferred payments;
 - Advice and information: building a comprehensive and accessible service;
 - Understanding how much it is going to cost: financial modelling for the cap plus implementation costs; and
 - Ensuring Adult Safeguarding Boards operate effectively on a statutory footing.
- 3.5 Whilst adult social care has a vital role to play and will deliver the bulk of the reforms it is important to recognise that the implementation of the Act will



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require contributions from and will have impact across the Council, with partners in health and with our external providers. Examples include:

- One of the general duties to co-operate between health and care relates to the provision of early intervention and prevention which will have resonance across Council and health services. This will need to align with the duty to provide information and advice to all, not just to those reaching agreed eligibility criteria.
- External providers are already seeking to understand the implications of the cap on an individual's payments for residential and nursing care (the Dilnot cap, currently set at £75,000) for their businesses. The cap will mean that residents of residential or nursing care who are self-funders when they first move in to institutional care but then reach the cap will become the responsibility of the local authority. Most businesses have benefited from charging self-funded places at higher rates than local authority funded places, a practice which will not be sustainable in the new regime.
- Housing, care and health services are seen as integral to the successful implementation of the Care Act, phase one of which will start in April 2015

Next steps/Programme Management to Implement the Act

- 3.5 The work needed to implement the provisions of the Act is being led by the Adult Social Services Leadership Team. There is a Care Act Implementation Board which has been set up led by a Programme Manager.
- 3.6 Whilst the key actions have been identified, some of which are for Adult Social Care and some for Commissioning, there is still work to do to assess the overall challenge for the Council and how this transformation work will align with other change programmes across the Council. This will include the interplay of the Better Care Fund (BCF) and integration, Customer Services and, as mentioned above, the work to implement the reforms set out in the Children and Families Act. Membership will therefore need to be extended to include health, children with disabilities service and housing, as well as the current adult social care and commissioning as this wider engagement will be critical.
- 3.7 There are significant pieces of work in areas such as IT, workforce, capacity and training given the scale of proposed changes to the nature of assessment and the role of care managers. In effect, the latter will be carrying out more social work tasks and moving away from the pure care management role introduced in the community care reforms which assessed eligibility and need for a menu of services.



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- 3.8 Identifying self-funders in Haringey, in order to understand both how we can offer information and advice and in order to assess the nature of the financial impact of the new requirements, is a pressing task with which all local authorities are struggling. Locally, we are working through our Providers' Forum to ensure we have the information we need.
- 3.9 We also need to engage more fully with communities, voluntary sector, providers and users of our services to prepare for and see through implementation.
- 3.10 Briefings for the Council and for partners will need to be delivered to ensure all are aware of the implications of the Act.

Risks & Issues

- 3.11 The Care Act represents a significant reshaping of current legislation and statutory guidance for adult social care. The following are identified as the key risks to implementation:
 - Workforce: the role of care managers will change to accommodate the requirements of the Act and they will in effect operate as social workers carrying out direct interventions themselves. This will require additional training and support and also some additional capacity into adult social care. The additional demands for assessment, increased entitlement for carers, universal deferred payments and the increased emphasis on prevention create questions relating to workforce - the need for new roles, the specific role of social workers, the workforce levels to meet the demands of the reforms and in which part of the sector they need to be developed, plus self-service options as an alternative. There is work at a London level, being co-ordinated by ADASS which will help to model the workforce needs and develop strategies for meeting them.
 - Market and providers: the changes to funding for residential care represents risk both to the Council and to providers. For residential care providers, many of whom already indicate that they are operating at very low margins, the difficulty in cross-subsidising self funders and council funded clients will increase their sense of financial fragility. For the Council, we do not yet know how many self-funders will become the responsibility of the Council once the cap (the Dilnot cap) has been reached, at what point and at what rates.
 - Portability of assessments will improve the user experience, as there will be no need for an additional assessment when clients move area, but means that the Council will be operating within a national rather than a local framework of assessment, again with consequent risk. Again, there is pan-London work to consider how London boroughs can collaborate on this.



- The requirements for information technology to support the new assessment arrangements, portability of assessment and the transparency of funding between self-funders and local authority funded placements has not yet been fully scoped.
- London Councils research has previously found that the costs of implementing the cap and raising the threshold could be in the region of £877 million; this means that the overall additional cost pressures on local authorities for preparing and implementing the reforms could be as high as £1.2 billion by 2019/20, but with most of the spend weighted in 2016/17 when the threshold is raised, and 2019/20 when the people are expected to begin reaching their maximum cap. These figures still need to be worked through for Haringey, based on a good estimate of current numbers of self-funders who will become Haringey's responsibility.
- London wide work is also being considered on possible public information campaigns. This work would appraise the options for shared campaigns, potentially commission materials and is intended to be more cost-effective than individual, borough based campaigns.
- London Councils has also setting up a London Care Act Commissioners Group exploring collaborative approaches to commissioning in light of the Care Act.
- There is little time to prepare for the implementation of the Act until new guidance is available in October 2014.

4. Comments of the Chief Finance Officer and financial implications

- 4.1 The Act will be implemented at a critical time for adult social care with pressure on adult social care budgets across the country and increasing demand as a result of demographic growth. It offers a major opportunity to shape the future of adult social care around the individual, moving away from a crisis response towards a focus on earlier intervention, more integrated care and increased personalisation. Adult Safeguarding Boards will be placed on a statutory footing for the first time. There is a broad duty to provide information and advice to everyone, whether or not they are entitled to free care or meet eligibility criteria, and to arrange care for self-funders if they request this. This is a significant shift from current practice and mirrors some of the provisions within the Children and Families Act. These require local authority areas to set out for residents their Local Offer for children and young people with special educational needs and/or who are disabled, identifying the range of services and provision which could support them.



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5. Comments of the Assistant Director of Corporate Governance and legal implications

N/A

6. Equalities and Community Cohesion Comments

N/A

7. Policy Implication

N/A

8. Use of Appendices

Appendix 1: Care Bill Provisions

9. Local Government (Access to Information) Act 1985

N/A



Appendix 1 Care Bill Provisions

Reform of Care and Support: An over-arching wellbeing principle has been introduced to underlie all provisions of the Act. A duty will be put in place for local authorities to promote the integration of services and will provide for further duties of co-operation for local partners.

Improving information: A duty will be in place to provide an information and advice service to everyone, whether or not they are entitled to free care or meet eligibility criteria, and to arrange care for self-funders if they request this. The Act sets out the responsibilities on local authorities to provide comprehensive information and support about the types of services and the providers available in their local area. It requires the authorities to identify all available resources, services and facilities so that the widest range of options are given to the public. They will also need to identify any carers or people in their area with care and support needs which are not currently being met to enable missing services to be developed and provided. Being able to access a wider range of good quality services should help to improve an individual's wellbeing and give them more control and personal choice over their care.

Entitlements to public care and support: The Act creates a consistent way to establish an individual's eligibility to public care and support. It also introduces the same rights for carers of people with care and support needs. Beginning with an initial assessment of their needs done by the local authority where a person is normally resident, it will establish if an individual has eligible needs. A financial assessment will also determine if these needs can be met by the local authority or if the person will need to pay for their own care, under a new cost capping scheme. A needs assessment should focus on the person's needs and what they want to achieve and allow a package of care and support to be designed around this. Giving each person the most appropriate care and support to suit them and their individual needs whilst helping prevent or delay increasing support requirements.

All individuals will have the right to ask the local authority to arrange their care for them irrespective of who is funding the care package. These plans should ensure that there is a consistent approach for everyone with eligible needs to get the care and support they require.

Assessment of eligibility: The Act will give the local authority a duty to provide an assessment to anyone who appears to need care and support regardless of their financial circumstances. It must take into account their needs and what outcomes they want achieve. It should look at the individuals own capabilities together with the support available to them from family and the local community.

The assessment must involve the individual together with their carer or another nominated adult. The assessment must also take into account the needs of the family. Following the assessment the local authority will assess the client's eligibility using the national framework. The national framework will be brought in via regulation to ensure consistent,



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minimum eligibility criteria throughout England. A national minimum eligibility threshold for social care will be introduced from 2015. The White Paper suggests that this will be set at 'substantial'. The new rules on assessment and eligibility will ensure the procedure is clearer for both the service user and the local authority.

Personalisation: The Act gives local authorities the legal responsibility to provide each individual with a care and support plan or a support plan in the case of a carer. The support plan must be worked out together with the person themselves and their carer or support person. Even if a person does not have any eligible needs they should be given support and information to help prevent further needs developing.

It will also give legal entitlement for an individual to receive their Personal Budget, which outlines the total costs involved in providing the agreed care and support plan identified. This includes the full costs of their requirements irrespective if they are to be met by the local authority or not. The service user can then decide if they want to receive a direct payment, either to themselves or someone acting on their behalf, to pay for some or all of their needs giving them more control over their own care.

The local authority's responsibilities do not end once the care plan has been put into place, they will have a legal responsibility to review the plan to make sure that the adult's needs and outcomes continue to be met over time.

The right to a personal budget and for this to be paid as a direct payment has been enshrined by law.

Financial assessment: The new law will set out a clear approach to charging. It will help people to understand what they have to contribute towards their care and support costs.

Following the eligibility need assessment a financial assessment will be conducted to establish if the client needs to contribute to some or all of the costs associated with their care and support plan. The new regulations will ensure that everyone has their finances assessed in the same way and will take into account their income and their assets. When an adult does not pay the full amount, but contributes towards their care and support costs, the regulations will say how much money they must be left with after the local authority has charged them.

Capping costs: Currently, people have to pay for their care costs until their savings and assets have been reduced to a minimum level. The Act allows the establishment of a cap on care costs in the region of £72,000 from April 2016. This would ensure those who saved for their old age do not face losing all their savings paying for their care costs. The cap amount will be adjusted annually in line with inflation. Individuals will be responsible for their care costs up to the £72,000 cap if they can afford it, which would be established by an extended 'means-test'.

The individual's 'personal budget' will show what the local authority would pay for the person's care and support package. It will also detail the rate at which the individual is progressing towards the cap. Once the cap is reached the local authority will be responsible for taking over the full costs of the care package although the individual will still be responsible for paying their general living costs.

The Act also requires the Health Secretary to review the capped cost system every five years. This review will decide whether the level of the cap needs to be changed. It will



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also look at whether other things, such as how much people must pay towards general living costs, are right.

Deferred payment agreements: From April 2015, there will be a new legal right for people to defer paying care home costs, meaning they do not have to sell their home during their lifetime. The local authority will pay the care home costs during this time and will then reclaim the costs incurred on the sale of the property after the person has died. Councils would offer families loans repayable with interest to cover the cost of the scheme. This is not new and has been policy for a long time; however the provision to allow local authorities to charge interest on the deferred sum is new.

Safeguarding: Under new legislation, local authorities and other parts of the health, care and support system would have a clear framework to protect vulnerable adults at risk of abuse or neglect. Although local authorities have been responsible for safeguarding for many years, there has never been a clear set of laws or regulations behind it. As a result, it has often been very unclear who is responsible for what in practice.

It will become a legal requirement of each local authority to set up a Safeguarding Adults Board (SAB) formalising the arrangements most authorities currently have; and ensure:

- The boards include the local authority, NHS and police who will discuss and act upon any local safeguarding issues.
- They work with the local people to develop plans to protect the most vulnerable adults.
- Publication of these plans, review them annually and report on progress, allowing different organisations to ensure they are working together in the best way possible.

Local authorities will also need to investigate, or get others to make enquiries, if they think anyone with care and support needs is at risk of neglect or abuse, regardless to whether they are providing care and support services to the person. The Bill does not however give the local authority the right to enter a person's property without permission.

The Act gives responsibility to the SAB to arrange a Safeguarding Adults Review in some circumstances: for instance, if an adult with needs for care and support dies as a result of abuse or neglect and there is concern about how a member of the SAB acted. The reviews also establish the facts and ensure lessons can be learnt and prevented from happening again. They will make sure that SAB's get the full picture of what went wrong, so that all organisations involved can improve as a result. It also makes clear that if the SAB request information from an organisation or individual they have an obligation to provide whatever is requested.

Carers: The right to an assessment has been extended to all carers and introduces a clear entitlement to support so they can maintain their own health and wellbeing. Carers will have a personal budget as part of their care and support plan, and give people the right to ask for this to be made as a direct payment.

Local authorities will now have a duty to provide carers with their own assessment of support needs. This will look at the impact on the carer in providing this role, what they want to achieve in their own life and if they are able and willing to continue in their caring role. If agreeable to all parties the assessment can be carried out jointly with the person they are caring for. Assessment will be made and eligibility assessed in a similar way to that of the person they care for.



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They will be entitled to support if:

- They have eligible needs.
- The person they care for lives the local authority area.
- There is a charge.

[Support may be provided to things as wide ranging as support with housework or gardening, to paying for respite care or helping to make improvements to their own health and wellbeing].

In some instances a local authority may decide to make a charge for supporting a carer. If this is the case a full financial assessment must be undertaken. The carer should receive a personal budget and can ask for direct payments to manage their own support in line with that available to be person being cared for.

The Act does not relate to young carers who are supported under laws relating to children; however when making a needs assessment of a person with care and support needs the impact on the entire family should be taking into consideration. Likewise an adult carer of a disabled child will generally be supported by the children's services however they can request an assessment of their needs as a carer prior to the child turning 18.

Moving areas: The Act has set out guidelines for continuity of care for people wishing to move between local authorities areas within England.

This means that people can bring their previous assessment to a new local authority area when the move home, until the new local authority carries out an assessment of their own. There is however no specific duty to arrange care in the same way as previously.

The government recognises that people with care and support needs are often reluctant to move home despite wanting too, due to worries over their care arrangements.

Guidelines are set out to help ensure there is a clear process for anyone wishing to move between areas if they are receiving care and support from the local authority or funding their own care on a care plan to move towards the cost capping or if they wish to move into a care home in a different local authority.

Provider failure: The Act sets out a practice to oversee the financial stability of the 'most hard to replace' care providers and gives new responsibilities to local authorities if care providers should fail. Local authorities will have a clear temporary responsibility to ensure both residential care and care provided in a person's home continues if a care provider fails. This is regardless of whom currently pays for the care.

The Care Quality Commission (CQC) will be given new responsibilities to:

- Have direct oversight of the financial stability of the 'most hard to replace' care providers, who will be determined under new criteria, and request them to put into place sustainability plans if they feel they are in danger of getting into financial difficulties.
- CQC will also have the power to request information from any provider which they think is likely to fail, and be able to share information with relevant local authorities to ensure that the individuals care and support is protected.

Councils will be able to outsource assessments to multiple providers in each area, giving service users' choice over who assesses their social care needs. The government has speculated this could include social workers setting up their own social enterprises to deliver this service.



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Local authorities will also be required to use a range of quality services that promotes diversity and quality in the market of care and support in their area. Local authorities must try to make sure that there are a range of providers offering high quality services that meet the needs of individuals, families and carers.

Transition from child to adult: The Act will give young people and their carers a right to request an assessment prior to the child turning 18. The care and support assessment could be combined with other assessments to ensure the young person does not have to undertake multiple assessments.

The young person, or the carer or a child carer, should be informed if they are likely to be eligible for any benefits once the cared for person turns 18, or themselves if they are a young carer. They should be given advice as to how any eligible needs might be met and what other support and measures might be taken to help prevent their needs increasing.

If the local authority does not agree to provide the assessment then they must confirm in writing why they will not accept the request and provide information on what can be done to prevent or delay support needs arising.

The Act will ensure that no-one reaching the age of 18 and who is already receiving any support under children's legislation, will suddenly find themselves without the care and support they need at the point of becoming an adult. The Act requires local authorities to continue providing a person with children's services until adult care and support is in place to take over with no gap.

Workforce: The government has made a commitment to improve the skills and capability of the social care workforce, to help them deliver high quality care and support by:

- Personal assistants will have access to more support, learning and training through the Workforce Development Fund.

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