

ROTHERHAM BOROUGH COUNCIL – REPORT TO MEMBERS

1	Meeting:	Cabinet Member for Adult Social Care
2	Date:	16 June 2014
3	Title:	Care Act 2014
4	Directorate:	Neighbourhoods and Adult Services

5 **Summary**

The Care Act 2014 represents the most significant change to social care legislation in 60 years, and the timescales within which it is to be implemented are extremely tight. It received Royal Assent this week. Probably as significant as the Act is the accompanying regulations and guidance which will form the basis of implementation of the new legislation, and they are due out for consultation in May/June 2014.

This report outlines briefly the key elements of the Care Act 2014 and the plans in place to support its implementation in Rotherham.

6 **Recommendations**

- **Cabinet Member notes the report and the plans in place for implementation.**

7 Background

7.1 The White Paper, “Caring for our Future, Reforming Care and Support”, set out the proposed changes in the care and support system.

The Law Commission Report of 2011 recommended bringing together the piecemeal framework of legislation which supports Adult Social Care into one piece of legislation and this report informs the Bill. While not achieving the level of attention raised by the Health and Social Care Act 2012 (which focused almost exclusively on health services) there have been, and continue to be, changes to the bill as it has passed through Parliament and a detailed examination of the final legislation will be required to ensure that the amendments have been fully understood and captured in the plan.

In addition to regularising the legal framework it also sets out a cap for the charges that people will have to pay for care in their lifetime. The Act's stated purpose is to prevent and reduce needs, to put people in control of their support and to clarify entitlements to Care and Support, as set out in Part 1.

Parts 2 and 3 of the Bill set out the changes to the way CQC regulates Health and Social Care Services and changes to Health Education that were not included in the Health and Social Care Act 2012. Neither Part 2 or 3 is addressed in this report but will be reviewed once the legislation is finalised and further reports provided if necessary.

7.2 The Care Act 2014

The Care Act aims to transform the social care system and its funding. As a result, a clear and detailed plan is required to prepare for its implementation, and to understand the impact it will have on the Council. The Department of Health is working together with the Local Government Association (LGA) and the Association of Directors of Adult Social Services (ADASS) to develop and shape the regulations which will come under the primary legislation, and to inform the statutory guidance on how local authorities will meet the legal obligations.

The legislation will have a major impact on local authorities in relation to their adult social care responsibilities. The Care Bill places new duties and responsibilities on local authorities as well as extending existing responsibilities. The Bill also seeks to introduce new regulations in relation to people's eligibility for care and support services, and in changing the existing charging regimes. Additionally, the Bill seeks to introduce funding reforms based on the recommendations of an independent commission led by Sir Andrew Dilnot in 2011.

The Care Bill places a duty on local authorities to carry out their care and support functions with the aim of integrating services with those provided by the NHS and other health related services including housing, to be in place by 2018.

7.3 **Key elements of the Act as currently laid out:-**

Improving Advice, Information and Guidance

The Bill sets out the responsibilities that LAs will have to provide comprehensive information, advice and guidance about available services (including those provided by the Health and Voluntary Sector) to anyone in need, irrespective of whether they meet eligibility. Local authorities will also need to identify carers or people with care and support needs not currently being met.

Entitlement to Care and Support

The Bill gives carers an equal right to assessment. It also seeks to provide a consistent way to establish eligibility across the country. Local Authorities must complete an initial assessment of need to establish if an individual has eligible needs and then agree the cost of care. A financial assessment will then determine if needs can be met by the LA or if the person will need to pay for their own care, under the cost capping scheme. All individuals will have the right to ask the LA to arrange their care for them irrespective of who is funding the care.

Assessment of Eligibility

The LA's duty to provide an assessment irrespective of financial circumstances is strengthened. Following an assessment, a new National Eligibility Criteria will be used. It is thought that the new criteria will match the level at which Rotherham has set its Fair Access to Care Services (FACS) eligibility – substantial – but the detail is as yet unknown. There is a new Appeal Process allowing appeals of the outcomes of assessment.

Personalisation

The Bill embeds current commitments to providing personalised services. LAs have to provide each individual with a personal budget and a care and support plan, or a support plan to support a carer, even when the cared for person does not have eligible needs. This area is as yet unspecified as to the way in which these needs are to be met and represents a significant risk. All individuals in need of care will receive a Personal Budget which outlines costs of care, including where the LA is not the funder. LAs will also have a legal duty to review plans for people who fund their own care. RMBC currently review the services received by people who self fund and choose to use our contract to support their self-funded placement in residential care, as a matter of good practice. This however represents a significant resource risk as it widens the number of reviews required by an as yet unqualified sum.

Financial Assessment

The new law will set out a clear approach to charging. Details are still not yet known. There has been some detail set out on the Care Cap and Care Account.

Cap on Care Costs

The cap will be introduced in April 2016. The cap will be set at £72,000 for people of state pension age and over. The agreed cost of meeting care needs (not the amount the individual pays) will contribute towards the cap. Details are as yet unclear as to how people under 65 will be treated, but their cap may be lower. People who turn 18 with eligible needs will receive free care and support to meet these needs. This will result in a reduction in income to the council. People with up to £118,000 capital, including the value of their home, will receive financial help, rather than £23,250 as at present. Living costs (known as hotel costs) will still need to be paid by people in residential care, at a level of around £12,000 per year. This is not widely known and means that people will not reach their "cap" of £72,000 as quickly as they may currently think.

Deferred Payments

There is a new legal right to defer payment on admission to care, set against the value of your home. Rotherham already provides this service. The key change is that the LAs can now charge interest on these payments to cover costs.

Safeguarding

It will be a legal requirement to have a Safeguarding Adults Board and to arrange for Safeguarding Adults Reviews to ensure lessons can be learned from serious incidents. The Rotherham SAB was reviewed in 2013 in anticipation of this change and, subject to a review of final guidance, should be compliant in April 2015.

Carers

As mentioned above, carers are given the same rights as the people they care for and LAs will now have a duty to provide carers with their own assessment of support needs. An LA can consider charging carers for support, which is a change from current legislation care provided to the individual continues to be charged to the individual.

Portability of Assessment/Provision

There is a new duty to provide a consistent service when someone moves from one LA to another, from day one of their move into the Borough.

Provider Failure

The Bill sets out a requirement on CQC to oversee the financial stability of providers and this section requires LAs also to be aware of the financial stability of the most hard to replace providers, and to have plans in place to support provider failure. LAs will have a clear temporary responsibility to ensure both residential and domiciliary care continues if a care provider fails, regardless of whom currently pays for the care.

Transition from Child to Adult

This gives young people and their carers a right to request an assessment prior to the child turning 18. It does not refer to the Green Paper initiative in

Children's Services which should ensure that every child with a disability or special educational need has an Education Health and Care Plan from 14 to 25. There will be a need to ensure both sets of legislation and guidance are developed with reference to each other.

7.4 Implications for Rotherham

It is anticipated that additional funding will be made available to local authorities in relation to these new duties but at this stage it is not clear what the level of funding will be and whether this will cover the actual costs that local authorities will have to meet. Also, it is not clear whether the funding will include temporary allocations for implementation of the changes.

Local authorities are now considering the implications of the changes arising from the new legislation. Some of the issues that the Council will need to address are:

- understanding the implications for the Council of a national eligibility framework
- need clear information about self-funders, not just in care homes but also those with eligible needs who are purchasing community based support services, who will be entitled to an assessment of need, support plan and annual review
- gaining an understanding of the new processes that will need to be put in place for the provision of 'care accounts' including;
 - financial assessments of self-funders
 - the monitoring of self-funders' eligible care costs, based on what the local authority would pay for the care i.e. 'reasonable cost', not on the amount the self-funder is paying
 - production and provision of 'care account' statements for self-funders
- assessing the financial implications of the cap on care costs and of an increase in the upper threshold for financial support from the local authority
- awareness of those people, including carers, who have unmet needs who would be eligible for social care services
- an understanding of the numbers of carers who will be entitled to an assessment, to support planning where relevant
- the financial implications of extended carers' support services – which will be non-chargeable

- the implications arising from the responsibility of ensuring there are sufficient preventative services which delay people's need for long term care and support
- the development of processes to recover costs for meeting a person's eligible needs where funding responsibility lies with another local authority
- the resource implications of extended responsibilities in relation to transitions from children's to adults' services
- the implications for assessment and care management staff with a move to proportionate assessments with an 'asset based' approach i.e. enabling people to determine the best way in which their needs can be met utilising their own resources, with any additional support being provided via the local authority
- the implication of extended responsibilities to provide written information and advice to people with non-eligible needs on what can be done to prevent or delay the need for care and support

7.5 Implementation Plans

There is a National Programme in place, co-led between the DCLG and the LGA with ADASS involvement. There is also a regional programme, led by ADASS Yorkshire and Humberside Branch, with a lead officer and sub groups. Local authorities will be working with and contributing to these work groups.

In order to gain early understanding of the changes and the implications for the Council, a programme of work commenced in 2013 in Rotherham to consider in detail the implications of the Bill and to scope and plan the implementation of the required changes. A Care Act Steering Board has been established with workstreams identified against key areas of work. This work will also enable the Council to identify future resource requirements arising from implementation of the new responsibilities.

Substantive sub groups have now been set up, each with Terms of Reference, an action plan and risk register. The Board will manage the development and implementation of plans, once the final legislation has been published, and will ensure implementation is managed and effective.

The sub groups and leads are:-

- Information Advice and Guidance (Sarah Farragher)
- Finance, Deferred Payments and Charging (Mark Scarrott)
- Assessment, Eligibility and Transitions (Michaela Cox)(John Williams)
- Commissioning (Janine Parkin)
- Safeguarding (Sam Newton)

The Enabling sub-groups are:-

- Communication and Customer Engagement (Dave Roddis)
- Policy Group (Kate Green)
- Carers (Janine Moorcroft)
- Workforce Development (Michaela Cox)
- ICT Change (Jayne Dickson)
- Legal Perspectives (Linton Steele)

The Care Bill Tracker attached (Appendix A) shows that actions required against each clause have been captured within a workstream. There are a number of other actions needed which incorporate a range of actions or implications of the Bill which need to be addressed through a Task and Finish Group. These include:-

- the development of a guidance document or care management manual which sets out clearly the way in which Rotherham is implementing the Care Act. This will include specific guidance which will be developed by each of the workstreams. This manual should be reviewed by Legal Services, once complete, to ensure RMBC is compliant. It will need to be reviewed, following any legal challenge to the Act and at least annually to ensure ongoing compliance. It is not intended to be a set of instructions but should guide the way in which professional implement the Act.
- Provider Services/Quality of Services – while not a focus of the Act, there are implications for both in-house provider services, Contract Compliance Officers, Contracts Team and Performance and Quality Services. The impact of the Duty of Candour, ratings, service quality profiles to be assessed and actions agreed.
- Carers – this is the change with the potential to have the largest financial and resource implications. To ensure that the strands that relate to carers – assessment, eligibility, support planning, charging – are developed consistently across the workstreams, it is suggested that a workshop or task and finish group is established to scope the actions required and task out to the workstreams for delivery.

8 Risk and Implications

Many of the implications have been set out above. There are other areas of risk including:

- Increased costs when people reach the Care Cap of £72,000 and the Council then has to meet the full cost of care, regardless of the value of their assets.

- Cost of implementation of care account, in administration and system costs for this new initiative, cost of implementing the Appeals system, unlikely to be offset by any reductions in complaints, and initial set up costs, costs of transformation and staff development.
- Impact on council of significant increase in numbers of people approaching the council for assessment, review and care account. As yet unquantified, work is underway through the use of an ADASS tool to estimate the impact on Rotherham.
- Impact on the cost of care from existing large scale cross-subsidisation of local authority placements by people who fund their own care.
- Time to implement significant changes such as consultation on charges to eligibility.
- Regulations and guidance are therefore not tested and could be open to legal challenge post April 2015.
- Any changes must be co-produced with customers, in consultation and engagement, to ensure that they are part of, and aware of changes.
- There is no one single model that can determine costs; the factors are so complex and inevitably factors previously unconsidered will emerge during implementation.
- Impact on provider market – it is known that residential homes operating in deprived areas with mainly LA funded residents will become less cost effective and there is a risk of a two tier market.

The Care Act Board has developed a risk register.

9 Finance

In the Local Government Finance settlement in December 2013 it was announced that Local Authorities will receive an allocation for Adult Social Care new burdens funding in 2015/16 to fund increased capacity including the implementation of the universal deferred payment scheme. £335m is available nationally with Rotherham indicative allocation of around £1.8m but yet to be fully confirmed. Also within the Better Care Fund there is the expectation that an element of the existing funding should be used to cover a national minimum eligibility threshold and introduce a new duty to provide support for carers.

All Local Authorities are to receive a non-recurrent grant of £125k in 2014-15 to support early implementation of the Care Bill.

10 Policy and Performance

The Care Bill Tracker will ensure that all elements of Part 1 of the Act are addressed. In addition, Part 2, which relates to CQC activity, Part 3 relating to Health Education England, and parts 4 and 5 which relate to integration and general orders will be reviewed to ensure that any related links to Adult Social Care and Public Health Services are known and addressed.

The Customer Engagement Sub Group will ensure that all changes are co-produced, ensuring that customers are kept at the heart of the process.

An Impact Assessment is being produced.

This process results in significant changes to Council Policy – both in terms of amendment to existing and new policy. Consideration is being given to the way in which these changes can be managed efficiently in respect of Council decision making and approval processes, including consultation with members, and Cabinet timetables.

11 Background Papers and Consultation

- “Caring for the Future, Reforming Care and Support” – Dept of Health 2012
- “Adult Social Care” – Law Commission, May 2011
- Care Bill (HL) – 2012/13 www.parliament.uk
- Care Bill Fact Sheets www.gov.uk

Contact Name: Shona McFarlane
Telephone: (01709) 822397
Email: shona.mcfarlane@rotherham.gov.uk