

CABINET ITEM COVERING SHEET PROFORMA

AGENDA ITEM

REPORT TO CABINET

8th OCTOBER 2015

**REPORT OF CORPORATE
MANAGEMENT TEAM**

CABINET DECISION

Adult Services and Health – Lead Cabinet Member – Councillor Beall

CARE ACT 2014 - UPDATE

SUMMARY

The Care Act 2014 (the Act) introduces major reforms to the legal framework for Adult Social Care. The implementation of the Act was originally to take place in two phases, taking effect in April 2015 and April 2016. However, in the summer of 2015, with the first phase having already taken effect on 1 April 2015 the Government changed plans for implementation of the remainder of the Act. It is now planned that funding reforms will be implemented in 2020 and not April 2016. Proposals regarding the implementation of a new appeals system will be announced as part of the autumn Spending Review.

In terms of the implementation of the first phase of reforms the Council has progressed very well. In summary, the Council was well prepared for the first phase of the Care Act when it came into effect on 1 April 2015, with significant work having already been undertaken in implementing plans to ensure compliance. Since April 2015 work has continued to strengthen our arrangements with post-implementation reviews continuing to ensure we are well placed to continue to meet the requirements of the new legislative framework.

RECOMMENDATIONS

It is recommended that Cabinet:

- a) Receive this report and note the progress that has been made in ensuring compliance with the legislative changes that came into effect on 1 April 2015;
- b) Note the Government's intention to delay funding reform to 2020 and make a further announcement regarding a new appeals system in the autumn Spending Review;
- c) Note the intention to report to December Cabinet on the findings and recommendations regarding Charging Policy.

REASONS FOR THE RECOMMENDATIONS/DECISION(S)

To ensure compliance with the new legislative framework for adult social care and consider the key areas in which the Act introduces new discretions.

MEMBERS' INTERESTS

Members (including co-opted Members) should consider whether they have a personal interest in any item, as defined in **paragraphs 9 and 11** of the Council's code of conduct and, if so, declare the existence and nature of that interest in accordance with and/or taking account of **paragraphs 12 - 17** of the code.

Where a Member regards him/herself as having a personal interest, as described in **paragraph 16** of the code, in any business of the Council he/she must then, **in accordance with paragraph 18** of the code, consider whether that interest is one which a member of the public, with knowledge of the relevant facts, would reasonably regard as so significant that it is likely to prejudice the Member's judgement of the public interest and the business:-

- affects the members financial position or the financial position of a person or body described in **paragraph 17** of the code, or
- relates to the determining of any approval, consent, licence, permission or registration in relation to the member or any person or body described in **paragraph 17** of the code.

A Member with a personal interest, as described in **paragraph 18** of the code, may attend the meeting but must not take part in the consideration and voting upon the relevant item of business. However, a member with such an interest may make representations, answer questions or give evidence relating to that business before the business is considered or voted on, provided the public are also allowed to attend the meeting for the same purpose whether under a statutory right or otherwise (**paragraph 19** of the code)

Members may participate in any discussion and vote on a matter in which they have an interest, as described in **paragraph 18** of the code, where that interest relates to functions of the Council detailed in **paragraph 20** of the code.

DISCLOSABLE PECUNIARY INTERESTS

It is a criminal offence for a member to participate in any discussion or vote on a matter in which he/she has a disclosable pecuniary interest (and where an appropriate dispensation has not been granted) **paragraph 21** of the code.

Members are required to comply with any procedural rule adopted by the Council which requires a member to leave the meeting room whilst the meeting is discussing a matter in which that member has a disclosable pecuniary interest (**paragraph 22** of the code).

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DETAIL

Background to the Care Act 2014

1. As reported to Cabinet in February 2015 the Care Act 2014 was being introduced by Government in two phases:
 - Phase 1 - Social Care Reform, which was to take effect April 2015, and:
 - Phase 2 - Funding Reform, which was to take effect April 2016.
2. Since that time the Government has changed its plans for implementation. The Phase 1 Social Care Reforms were implemented as planned, taking effect on 1 April 2015. However, it

was announced in the summer that the Phase 2 Funding Reforms were to be put back to 2020. In addition, the Government will make a further announcement on plans for a new care and support appeals system following the Spending Review in the autumn.

3. The purpose of this paper is to provide Cabinet with an update on progress in implementing the requirements of the Care Act that took effect in April 2015 and provide further detail regarding the now delayed funding reforms.

Phase 1 - Social Care Reform, which was to take effect April 2015

4. In February the report to Cabinet outlined the background to the Act, the key requirements under the Act, the changes that were required, the plans in place, and the progress being made in preparation for Act readiness. This report provides an update to Cabinet on the changes that have now been implemented and the work that continues to progress in response to the Social Care Reforms.
5. The key features of the legislation that came into effect in April 2015 included:
 - Duties to promote wellbeing;
 - Duties to prevent needs for care and support;
 - Duty to provide an information and advice service;
 - Duty to facilitate a vibrant, diverse and sustainable market of care and support provision;
 - Requirements to carry out an assessment of both individuals and carers, regardless of whether they are expected to be eligible for support from the council. This includes assessments of those who will be 'self-funders', paying for their own care and support, who would not previously have come into contact with the council;
 - There is a new single duty for local authorities to undertake a carer's assessment on the basis of a need for support. This removes the existing requirement that the carer must be providing a 'substantial amount of care on a regular basis', thus lowering the threshold for assessment. The council must meet a carer's support needs on a similar basis to those needing care;
 - A national minimum eligibility threshold for support which replaces the current system of councils having discretion to set the eligibility threshold as they see fit based on the Fair Access to Care Standards criteria of 'low', 'moderate', 'substantial' and 'critical';
 - Requirement to offer a universal deferred payment scheme – where people can defer the costs of care and support set against the value of a home they own, with the costs being paid when the home is sold;
 - A new duty on local authorities, in certain circumstances, to arrange independent advocacy to facilitate the involvement of an adult or carer who is the subject of an assessment or a care or support plan and review;
 - Statutory framework for safeguarding adults at risk of abuse or neglect;
 - Duties to ensure continuity of care;
 - New duties regarding prisoners;
 - Duty to co-operate with partners and for certain partners to co-operate with the Council, in particular the NHS.
6. Recognising the significance of the reforms a Care Act Project Team was established in early 2014 through the Adults Big Ticket Programme Board. The remit of the Project Team was to:
 - Undertake detailed analysis of the Act requirements;

- Assess the extent to which the Council currently met the requirements;
 - Identify where changes would need to be made to ensure compliance with the Act;
 - Prepare and implement project plans to ensure compliance by April 2015 and April 2016 as appropriate.
7. The assessment of the implications and identification of changes needing to be made was a dynamic and iterative process. Following Royal Assent in April 2014 a detailed review of the Act clauses was undertaken, each of which had a varying degree of impact on the Council depending on whether or not the clause:
- Consolidated or modernised existing law (which would largely mean business as usual); or
 - Was new in law but not in policy, the impact of which would be dependent on local practice;
 - Was new in law and practice, and would impact on all local authorities.
8. The draft Statutory Guidance and Regulations were published in the summer of 2014 and these provided further material with which to assess and evaluate our compliance with the Act and the identification of areas in which changes would need to be made.
9. During the period October to December 2014 a comprehensive programme of full day legally based training sessions was delivered by Care & Health Law to senior managers and practitioners of the Council. Covering all aspects of the Act the initial training facilitated a thorough understanding of the impact locally and the changes that would need to be made in preparation for April 2015.
10. In the run up to the Act taking effect in April 2015 a significant amount of work was undertaken in readiness for the legislative changes taking place, including:
- A comprehensive workforce development training programme;
 - The implementation of a communications and stakeholder plan;
 - The development of revised working practices, procedures and systems, and;
 - Building additional capacity where required.
11. Since April 2015 the Adult Programme Board has continued to review the effectiveness of the changes that have been implemented with a series of post-implementation reviews. These post-implementation reviews have ensured that the changes are embedded and operating effectively, thereby ensuring continued assurance that the reforms have been implemented effectively.
12. In addition, the Adult Programme Board continues to monitor the impact of the changes from the perspective of activity levels, resources and budget. The purpose of the impact tracking is to provide:
- A basis with which to assess the sufficiency of the additional Care Act funding that was provided for 2015/16;
 - Data to monitor the wider impact of the Care Act on workloads, staff resources and systems;
 - Intelligence to inform the dialogue with Government regarding future funding to meet the Care Act burdens.

13. In summary, the Council was well prepared for the first phase of the Care Act when it came into effect on 1 April 2015, with significant work having already been undertaken in implementing plans to ensure compliance. Since April 2015 work has continued to strengthen our arrangements with post-implementation reviews continuing to ensure we are well placed to continue to meet the requirements of the new legislative framework. This is further strengthened by our continued involvement in regional work on the Care Act and participation in the national stocktake process (4 stocktakes to date have been completed), both of which contribute to learning lessons and the continued improvement of our local arrangements.
14. The following section provides a brief summary of some of the changes that have been implemented for each of the areas of the Act:
- The principle to promote wellbeing was embedded through revised working practices and procedures, especially the new eligibility assessment documentation and reinforced through the roll-out of the workforce development programme;
 - In addition to the existing arrangements to prevent needs for care and support our arrangements continue to be strengthened through continued progress in a number of areas including:
 - The Better Care Fund (BCF) Plan - which is strengthening arrangements to meet the duties around targeted interventions;
 - Revised commissioning objectives, which for prevention means preventative mapping, gap analysis, market-shaping, and work on developing the business case for prevention investment;
 - The information & advice workstream (including the eMarketplace project) - which is ensuring appropriate information, advice and signposting to facilitate self-support and prevention.
 - Further strengthening our information and advice with the launch of the Stockton Information Directory, a dedicated website page to provide information on the Care Act, revised information and advice on the adults social care web pages, a full set of over 20 adult social care public information leaflets that are Care Act compliant, specific advice on the web and in a public information leaflet regarding independent financial advice;
 - The duty to facilitate a vibrant, diverse and sustainable market of care and support provision has been strengthened through a full review of the commissioning function and subsequent reconfiguration to reflect the requirements under the Care Act;
 - The new single duty for local authorities to undertake a carer's assessment on the basis of a need for support has been implemented, with a pathway and assessment procedures developed and significant workforce development, supported by revised public information
 - A national minimum eligibility threshold for support which replaces the current system of councils having discretion to set the eligibility was again implemented through revised assessment procedures being developed and significant workforce development, supported by revised public information – the revised assessment and care planning requirements has led to a separation of assessment and support planning which has put a particular pressure on teams, workloads and the timeliness of assessments;
 - Requirement to offer a universal deferred payment scheme was implemented through the revision of the existing deferred payment scheme to reflect the national requirements;
 - The new duty on local authorities, in certain circumstances, to arrange independent advocacy has been implemented with revisions to working practices during the assessment process and significant workforce development;
 - The new duty to meet the care and support requirements of prisoners with eligible needs has also been implemented, with arrangements now established, eligible prisoners assessed and identified and appropriate care and support now in place.

15. Overall, with extensive preparations taking place before April 2015, the first 6 months of operating under the new legislation have gone very well, with new ways of working bedding-in effectively. However, the Adult Programme Board continues to remain vigilant with continued monitoring of the impact and post-implementation review to identify any further areas of improvement that may need to be made.

Phase 2 - Funding Reform and a new Appeals System

16. As noted earlier, Government had planned to introduce funding reforms and a new appeals system in April 2016. However, in the summer the Government announced its plans to delay the implementation of funding reform to 2020 and make a further announcement regarding the appeals system in the autumn spending review.
17. The Government has said that the delay will allow time to be taken to ensure that everyone is ready to introduce the new system and to look at what more can be done to support people with the costs of care. The specific elements to be delayed are:
- The Cap on Care Costs (to April 2020);
 - The extension to the Means Test Thresholds (to April 2020);
 - The Appeals system (pending the Comprehensive Spending review).
18. As a consequence, no further work is planned regarding local preparations for either funding reform or an appeals system pending further government announcements.

Discretions requiring local determination

19. It was reported to Cabinet in February that there were a number of areas within the Act that related to charging policy and required local determination. As a consequence the following recommendations were agreed:
- A wider review of charging policy to take place later in 2015 when there will be greater certainty regarding the impact of the Act, in particular new duties regarding eligibility for services and clarity regarding April 2016 funding reform.
 - The decision to make changes to existing charging policy be deferred including the areas of residential care, carers, maximum charges, preventative services, light touch financial assessments and deferred payments until there is a wider review of charging policy.
20. It is planned that the findings of the review of charging policy and any proposed changes will be presented to Cabinet in December.

NEXT STEPS

- a) Adult Programme Board will continue to review post-implementation effectiveness, monitor the ongoing impact of the Act and await further Government announcements in the Spending Review regarding the appeals system.
- b) Report to Cabinet in December the findings of the review adult social care charging policy within the context of the new powers under the Act and impact of the new duties and funding reform, making recommendations as appropriate.

FINANCIAL IMPLICATIONS

The sufficiency of the funding provided by Government to meet the new duties continues to be monitored.

LEGAL IMPLICATIONS

As new legislation there are significant legal implications in relation to compliance with the Act. The significance of the legal implications were recognised at a very early stage and key steps have been taken to mitigate against legal risks including extensive involvement of the corporate legal team in our readiness preparations and a comprehensive programme of externally provided legally based training for senior managers and key practitioners.

RISK ASSESSMENT

Legal and financial risks relating to the Act were relatively high due to the potential for non-compliance and increased expenditure. In response to this a number of mitigating actions were taken to minimise the risks, including comprehensive legal training, active involvement of the corporate legal team, financial modelling and planned close monitoring of actual expenditure.

SUSTAINABLE COMMUNITIES STRATEGY IMPLICATIONS

None

EQUALITIES IMPACT ASSESSMENT

A full equality impact assessment will be undertaken as part of the review of the charging policy.

CONSULTATION INCLUDING WARD/COUNCILLORS

No consultation was undertaken as part of the implementation of the Care Act social care reforms because there were no fundamental changes to existing policies.

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Education related? No

Background Papers Care & Support Statutory Guidance – Department of Health October 2014

Ward(s) and Ward Councillors Not ward specific

Property No property implications