

Item No. 10.	Classification: Open	Date: 16 September 2014	Meeting Name: Cabinet
Report title:		Care Act 2014 – Overview	
Ward(s) or groups affected:		All	
Cabinet Member:		Councillor Dora Dixon-Fyle, Adult Care, Arts and Culture	

FOREWORD – COUNCILLOR DORA DIXON-FYLE, CABINET MEMBER FOR ADULT CARE, ARTS AND CULTURE

Helping ensure that people live healthy, independent and fulfilling lives is a key goal of the council. In Southwark there has been significant work in recent years to transform care and support services, increasing our focus on outcomes for individuals, promoting independence and helping people who have had a stay in hospital get back up on their own feet. With these changes, people in need of care are increasingly able to stay living in their own homes, leading active lives in their communities.

The Care Act, which received royal assent in May 2014, represents a transformation in adult social care law at a national level. The reforms are focused on principles of choice, control and fairness. However, these changes come at a time when there has been an unprecedented reduction of funding to local government – with the risk that the new laws will create more demands on services for those needing care at a time of less resources.

Southwark has already made significant progress on this agenda. Through key strategies like the Southwark carers’ strategy we are enabling an approach where carers are better supported for vital work helping those in need of care. The council has recently agreed a Southwark ethical care charter to tackle poor working conditions in care. The council’s overarching focus on wellbeing and enabling people to live healthy, active lives in their communities are all examples of where Southwark is already aligned to many of the requirements of the Care Act.

Still, within the new laws, there remain a number of areas where change will be needed—both for the council to change its own services and ways of working, and also to support local residents to understand the changes and what it may mean for them, particularly around funding reform. This is why the council has set up a programme to ensure there is a robust approach to implementing the new legislation locally.

This report sets out the key areas where we will need to work with our partners in the health and care system, local residents, and wider partners such as the voluntary and community sector to enable the council to effectively meet the requirements of the Care Act, and to support those who need care in the years to come.

RECOMMENDATIONS

That cabinet:

1. notes the requirements of the Care Act 2014 and the key new duties that it will place on local authorities including Southwark from April 2015 (page 41 of agenda).

2. notes the key areas identified as potentially having greatest impact on resources locally and the further work that has been identified by officers to review and update this understanding (pages 42 & 44).
3. notes the duties around cooperation for the wider council and health partners, and the particular importance of this in delivering duties around prevention and early action, providing information and advice, and promoting and maintaining wellbeing (page 42).
4. requests that the interim strategic director for children's and adults' services works with the strategic director for finance and corporate services to consider the implications of the Care Act 2014 on current services, and to ensure that this is taken into account within the forthcoming Policy and Resources Strategy.

BACKGROUND INFORMATION

5. The Care Act 2014 received Royal Assent on 14 May 2014 and is the biggest change to adult social care law in over 60 years. Part One of the Act relates to adult social care (ASC) and support. Part Two relates to care standards and is connected to how the NHS and other health providers deliver their services. The main focus for local authorities is on Part One.
6. The Care Act is designed to bring current laws¹ around adult social care together in one Act. The aims of the changes are to:
 - Create a legal framework that is clear and easy to navigate
 - Bring the law up to date to reflect a focus on outcomes that people want, rather than their disabilities, and put the individual in control of their life
 - Address areas of unfairness.
7. The majority of changes contained within the Act will be implemented from April 2015. Funding reform, including a cap on care costs, will take effect from April 2016.

KEY ISSUES FOR CONSIDERATION

Summary of main aspects of the Care Act

8. The key areas of change within the Act are:
 - Introducing general responsibilities including promoting people's wellbeing, focusing on preventing and delaying needs and providing information and advice to everyone, regardless of whether they have eligible care and support needs
 - Introducing national, consistent eligibility criteria for LA assistance for ASC
 - New rights to support for carers, on an equivalent basis for the person they care for
 - Legal right to a personal budget and support plan for needs that are being met by the LA (not currently a legal right but usual practice)
 - Making Safeguarding Adults Boards statutory and introducing new responsibilities around safeguarding.

¹ This includes relevant provisions in the National Assistance Act 1948, the Chronically Sick and Disabled Persons Act 1970, the Community Care Act 1990 and carers' legislation.

9. In addition, there are major reforms to the way social care is funded (from April 2016), including:
 - A lifetime “cap” on care costs to meet eligible needs for individuals (anticipated to be around £72,000 in 2015 prices)²
 - An increase in the threshold at which the level of people’s assets mean they are not eligible for state support (currently £23,250).
10. The requirements of the Act have direct or indirect impacts on all aspects of our adult social care business: frontline teams offering social care support; commissioning teams and the market, including care and support providers in all sectors; finance processes and finance; cross-council relationships, particularly housing and community services; and the health system.

Policy implications

11. The Care Act represents the legislative element of national Government’s approach to reforming care and support. At a national level, the driver remains about putting people and their carers in control of their care and support, while ensuring that the care and support system is one that can keep up with the demands of a growing older population³.
12. Southwark has been working hard to realise our vision for adult social care, supporting people to live independent, fulfilling lives. Many of these principles remain important within the Care Act, particularly around choice, control and independence for people accessing support.

Opportunities for transformation

13. The key opportunities presented by the Act are:
 - Improving rights for carers, and giving them the right to have an assessment of support needs, and be offered local authority support for their eligible needs
 - A focus on the promotion of wellbeing (both adults and carers) when providing support
 - Greater clarity on safeguarding responsibilities and how the local authority and partners across sectors work to protect our most vulnerable residents
 - A fairer deal for those paying for the cost of care and support (through the lifetime cap on costs)
 - Giving our residents better information and advice, including access to financial advice, regardless of whether the local authority is funding their care and support, helping people take responsibility for planning their future
 - Duties that reinforce our work on integrating adult social care services with health, housing and children’s services in order to maintain wellbeing and prevent and delay care and support needs.

Link with existing local priorities

14. There are a number of local programmes of work underway that will support implementation of Care Act requirements. These include:
 - implementation of the carers’ strategy to improve outcomes for carers,

² To note that the cap does not include general living costs in residential care. The Government is suggesting this could be set at £12,000 p.a.

³ *HM Government. 2012. Caring for our future: reforming care and support*

- including developing our approach to personal budgets
 - market position statement development to inform our future strategic commissioning approach and ensure that we have an innovative, robust local market that can respond to the needs of our residents
 - work to develop a prevention framework in commissioning
 - leading work to date on integration, both with the clinical commissioning group (CCG) and through the Southwark Lambeth Integrated Care (SLIC) programme, including developing models for neighbourhood integrated working throughout the community
 - development of a strategy for safeguarding adults and a business plan for the Safeguarding Adults Partnership Board
 - transforming support for children and young people with special educational needs and/or disability (SEND) through Children & Families Act reforms, and ensuring that their transition to adult care and support is seamless
 - delivering our commitment to treating care workers ethically, enabling the workforce to do the very best jobs they can.
15. In addition, the key policy direction outlined in the Care Act is in tune with many of the Fairer Future promises, including Southwark's commitment to an age-friendly borough, a focus on education, employment and training, and maintaining health and wellbeing through free swimming and gyms and quality affordable homes.

Key risks and challenges

16. Although Southwark is already offering many services and support that are becoming law under the Care Act, there are some areas of challenge and risk.
17. **Uncertainty about additional demand from self-funders and carers in the future:** while we are looking to model and refine estimates on this, we cannot predict demand with complete certainty. This will then have financial and resource implications (outlined in later sections). As well as demand for assessment and access to ASC support, this may also impact on demand for wider council services that support wellbeing and can delay and reduce the need for social care. We will need to plan and work with partners and providers on how we respond to this extra demand.
18. **Impact on the local care and support market:** the combination of the cap, separation of general living costs in residential care and risk in the capital threshold for residential care may have a significant impact on the local care market. We will need to work closely with providers to prepare for changes.
19. The **funding reforms are complicated** and we need to make sure that residents **understand them**. For example, progress towards the cap on care costs will be based on the council's "usual cost of care" calculation, not necessarily what an individual resident pays. This will only apply to older adults with support needs, and it is not currently known how the cap will be applied to those aged 18 and over with support needs.
20. The **IT and informatics challenge** of the changes should not be underestimated, particularly given we are embarking on a significant IT transformation, implementing a new care management system in adults' and children's services that will enable a single view of service users, alongside the Care Act reforms. Ensuring that the programme of work adequately considers

Care Act requirements and is responsive to developments at a national level will be vital to success.

21. **Ongoing financial risk** and challenge of delivering these reforms in the context of a reduced public purse and significant savings requirements for the local authority over the next three years.

Monitoring and governance

22. We have established a programme of work to oversee and manage the change required. An implementation programme board, led by the Director for Adult Social Care and involving all key partners, provides oversight and strategic leadership for the work. This will report to senior management and council members, including the Health and Wellbeing Board and Cabinet, on progress towards implementation, working closely with the Cabinet Member for Adult Social Care, Arts & Culture on key implementation issues.
23. We will establish a communication and engagement plan to ensure that all partners in the system, including people using services, families and carers, are aware of the changes and what they will mean for them locally.
24. Officers are linked into key London-wide networks that are seeking to collaborate, sharing information and good practice around the Care Act, supported by the LGA, ADASS and London Councils.

Community impact statement

25. Communities across the borough will be impacted by this national legislative reform. The Department of Health completed a number of relevant impact assessments as part of the Care Act's passage through Parliament⁴. A summary of some of the key areas identified in the national assessments is included here.
26. A key group of people affected by the reforms are people 18 years+ who use care and support, carers and their families. These groups of people have protected characteristics under the Equality Act 2010. The intention is that implementation of the Act should have a positive impact on them.
27. Key aims of the reforms at a national level (as identified in national equality analysis) with a community and equality impact include:
 - Increasing the control that older and disabled people have over their daily life when accessing care and support by ensuring that key aspects of a personalised approach, including personal budgets and clarifying the law around direct payments, are included in primary legislation for the first time
 - Setting out a series of rights for carers for the first time and placing a duty on local authorities to meet carers' eligible needs – this is anticipated to have a significant benefit for women, as they tend to make up the majority of people identifying themselves in caring roles
 - New provisions around transition seek to smooth the pathway for young people with disabilities entering adulthood and seek to avoid a “cliff edge” for people moving from services once they reach 18

⁴ Impact Assessments for the Care Bill are available using this link. <https://www.gov.uk/government/publications/the-government-published-a-series-of-impact-assessments-alongside-the-care-bill> . The Government has also committed to providing further impact assessments as required, which may require further analysis.

- Increase equality of access to services, both in socio-economic and geographical/regional terms.
 - The need to ensure that information and advice available locally is appropriate for the local population (e.g. addressing challenges such as language barriers for particular groups).
28. Financial reforms, including the Government's proposal to extend the point at which the level of people's assets mean they are not eligible for state support (currently £23,250) means that a larger number of people with moderate wealth will be able to receive some level of financial support from the state. The Care Act continues to require local authorities to provide financial support to people with assets below this level. People in all socio-economic groups should be able to benefit from peace of mind through financial protection by capping the total costs of care for people.
29. When implementing the Care Act requirements we will need to consider the local implications and how we can best mitigate any risks for different groups of people from an equalities perspective. We will monitor the impact on specific groups as part of routine service equalities monitoring following the implementation of the Act.

Resource implications

Financial and budget issues

30. Implementation costs for the Care Act have currently been set by Government at around £335m nationally, based on the latest consultation. This covers additional funding for:
- Early assessments and reviews
 - Costs of administering deferred payment loans and the loans themselves
 - Capacity building, including recruitment and training of staff
 - Information campaigns
 - Capital investment, including IT systems.
31. In addition, a further £130m has been identified within national Better Care Fund allocations from 2015/16. This funding relates to putting carers on a par with users for assessment, implementing statutory Safeguarding Adults Boards and setting national eligibility.
32. At a local level, we currently estimate around £1.8m Care Act funding may be allocated for 2015/16⁵. This breaks down as:
- £0.7m revenue spending power (adult social care new burdens)
 - £1.1m Better Care Fund.
33. Planning and modelling work on the financial implications of the policy and practice changes is ongoing, particularly given the detail of secondary legislation. We continue to assess the sufficiency or otherwise of allocated funding, feeding into ongoing conversations with the Department of Health through the Local Government Association and other partners.

⁵ The figures are derived from early estimate modelling using DH and ADASS information. This remains subject to change in line with final allocations from central government funding settlements.

34. Early indications suggest areas with the largest resource implications include:
- Increasing demand for assessments (both for individuals and carers), including from people who may previously have funded their own care and support
 - Increased support for carers' with eligible support needs
 - Implementing a national eligibility threshold (though note this is dependent on the content of the regulations on national eligibility).
35. The requirements for 2016/17 relate to changes to client financial assessment capital thresholds and the introduction of a cap on the lifetime cost of care. Further financial modelling work on this will be undertaken to inform and identify any financial pressures for the Department's budget strategy planning process.

Staffing issues

36. Some of the key changes arising from the Care Act, e.g. national eligibility criteria, will have implications for staff learning, training and development. This has been identified as a key strand of work within Care Act implementation, being developed in partnership across ASC and Organisational Development.
37. In line with some of the likely demand increases (outlined in the previous section) we will also review resource requirements and ensure the capacity in the system is sufficiently flexible to deliver Care Act requirements from April 2015.
38. This will need to be kept under review throughout our planning and implementation phases, and has been identified as an area for consideration in medium term workforce plans.

Legal issues

39. The Care Act has a wide range of implications for local authorities in terms of the manner in which they discharge their statutory responsibilities. Given the nature of precedent in adult social care often being set through outcomes of case law, further implications of the legislation will be tested through the courts, as is currently the case for statutory responsibilities around care and support.
40. We will continue to work with legal experts as required to ensure that the local authority can deliver against its key statutory responsibilities.

Consultation

41. Engagement and consultation around the development of the Care Act has been at a national level. The Department of Health also launched a consultation on the wide range of secondary legislation (regulations and guidance), which ended on 15 August 2014⁶.
42. As we seek to implement the requirements of the Care Act, we will look to do so in partnership with relevant stakeholders as required. We recognise the importance of communication so that people understand the impact of any changes for them, and will be developing a plan that also takes into account the national communications campaign.

⁶ Information on the consultation can be accessed via <http://careandsupportregs.dh.gov.uk>. Consultation on financial elements is on a later timetable due to later implementation.

43. Any workforce implications will be addressed with appropriate HR and trade union participation as required.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Director of Legal Services

44. The report asks the Cabinet to note the following:
- The requirements of the Care Act 2014 and the key new duties that it will place on local authorities including Southwark from April 2014.
 - The key areas identified in the report as having potentially the greatest impact on resources locally and the further work that has been identified by officers to review and update this understanding.
 - The duties around cooperation for the wider council and health partners and the particular importance of this in delivering duties around prevention and early action, providing information and advice and promoting and maintaining wellbeing.
 - The Cabinet is asked to request that the interim strategic director for children's and adult's services works with the strategic director for finance and corporate services to consider the implications of the Care Act 2014 on current services and to ensure that this is taken into account within the forthcoming Policy and Resources Strategy.
45. The legal implications of the Care Act are set out in the report.
46. Further, the report identifies that the Act and associated regulations and guidance were subject to extensive national consultation and community impact assessment as part of its development and passage through Parliament. The report identifies the key groups with protected characteristics who were assessed as likely to be affected by the reforms and the intention that the implementation of the Act should have a positive impact on them. The report notes that, when implementing the Act, Southwark will need to consider the local implications and how best to mitigate any risks to those with protected characteristics.

Strategic Director of Finance and Corporate Services

47. This report recommends that cabinet notes the requirements of the Care Act 2014 and that the interim strategic director for children's and adults' services works with the strategic director for finance and corporate services to consider the implications of the Care Act 2014 on current services.
48. Some initial financial implications are contained within the body of this report. Further financial modelling will be undertaken to identify any financial pressures for council and these will need to be included within future rounds of budget setting.
49. The Care Act represents ongoing financial risk for the council in the context of a continued overall reduction to local authority funding. The impact will be regularly reported to cabinet through the quarterly budget monitoring process.

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
None		

APPENDICES

No.	Title
Appendix 1	Summary timeline for implementation of Care Act duties

AUDIT TRAIL

Cabinet Member	Councillor Dora Dixon-Fyle, Adult Care, Arts and Culture	
Lead Officer	Jim Crook, Interim Strategic Director of Children's and Adults Services	
Report Author	Becki Hemming, Policy & Programme Manager, Transformation	
Version	Final	
Dated	3 September 2014	
Key Decision?	No	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
	Officer Title	Comments Sought
	Director of Legal Services	Yes
	Strategic Director of Finance and Corporate Services	Yes
	Cabinet Member	Yes
	Date final report sent to Constitutional Team	3 September 2014

APPENDIX 1

Summary timeline for implementation of key Care Act duties

Key requirement	Timing	
Care Bill receives Royal Assent	May 2014	
Draft regulations/guidance issued for consultation	June 2014	
Consultation closes	August 2014	
Anticipated confirmation of secondary legislation (regulations/guidance) ⁷	From October 2014	
Duties on prevention and wellbeing	From April 2015	
Duties on information and advice (incl. advice on paying for care & support)		
Duty on market shaping		
National minimum threshold for eligibility		
Assessments (including carers' assessments)		
Personal budgets and care and support plans		
Statutory safeguarding framework, incl. Safeguarding Board		
Universal deferred payment agreements		
Extended means test		From April 2016
Capped care costs system		
Care accounts		
Implementation of new appeals system (to be determined)		

⁷ This is subject to the Parliamentary process and is just an indicator at present.