

HEALTH AND WELLBEING BOARD – 29 October 2014

Title of paper:	Care Act 2014: implications	
Director(s)/ Corporate Director(s):	Helen Jones, Director of Adult Social Care	Wards affected: All
Report author(s) and contact details:	Laura Catchpole, Policy Officer, laura.catchpole@nottinghamcity.gov.uk / 0115 8764964	
Other colleagues who have provided input:		
Date of consultation with Portfolio Holder(s) (if relevant)	4.6.14	
Relevant Council Plan Strategic Priority:		
Cutting unemployment by a quarter		<input type="checkbox"/>
Cut crime and anti-social behaviour		<input type="checkbox"/>
Ensure more school leavers get a job, training or further education than any other City		<input type="checkbox"/>
Your neighbourhood as clean as the City Centre		<input type="checkbox"/>
Help keep your energy bills down		<input type="checkbox"/>
Good access to public transport		<input type="checkbox"/>
Nottingham has a good mix of housing		<input type="checkbox"/>
Nottingham is a good place to do business, invest and create jobs		<input type="checkbox"/>
Nottingham offers a wide range of leisure activities, parks and sporting events		<input type="checkbox"/>
Support early intervention activities		<input checked="" type="checkbox"/>
Deliver effective, value for money services to our citizens		<input checked="" type="checkbox"/>
Relevant Health and Wellbeing Strategy Priority:		
Healthy Nottingham: Preventing alcohol misuse		<input type="checkbox"/>
Integrated care: Supporting older people		<input checked="" type="checkbox"/>
Early Intervention: Improving Mental Health		<input type="checkbox"/>
Changing culture and systems: Priority Families		<input type="checkbox"/>
Summary of issues (including benefits to citizens/service users and contribution to improving health & wellbeing and reducing inequalities):		
<p>The Care Act 2014 is new legislation that impacts on both adult social care and health services. It replaces 65 years of social care legislation a single statute aiming to improve support and wellbeing with dignity, respect, independence and choice for people in need of care and emphasises equality, prevention and integration. Many provisions in the Act reinforce or formalise a number of current initiatives and ways of working, however to meet the duties under the Care Act requires a broad programme of activity involving reviewing and developing current processes for compliance and the introduction of new systems and practices. This report outlines the key implications of the Act for the Council and partners.</p>		
Recommendation(s):		
1	Partners are requested to understand the implications of the Care Act 2014 on their organisation and the contribution they can make to the implementation of the Act.	
2	The Commissioning Executive Group are requested to monitor progress towards the implementation of the Care Act at their monthly meetings.	
How will these recommendations champion mental health and wellbeing in line with the		

Health and Wellbeing Board aspiration to give equal value to mental health and physical health ('parity of esteem'):

A key component of the Care Act 2014 is the principle of wellbeing, which has a broad definition which includes mental health and wellbeing. The Act places a duty on the Council and partners to promote wellbeing and actively seek improvements and preventative measures when carrying out any care and support functions.

1. REASONS FOR RECOMMENDATIONS

- 1.1 The Health and Wellbeing Board need to be aware of the implications of the Care Act, as it relates directly to the Health and Wellbeing Strategy Priority for Integrated Care: Supporting Older People and the commitment to improving citizen's experience of care through the delivery of more integrated primary, secondary health and social care services.
- 1.2 To note that the Care Act requires greater integration and co-operation between health, care and support, and the wider determinants of health such as housing. The draft guidance specifies that cooperation must take place between local authorities, NHS bodies, local offices of the Department for Work and Pensions (e.g. Job Centres), the Police and Prison and Probation Services.

2. BACKGROUND (INCLUDING OUTCOMES OF CONSULTATION)

- 2.1 The Care Act reforms are based on the recommendations of a three-year review by the Law Commission of adult social care law, published in May 2011 and the Dilnot Commission on the Funding of Care and Support 2012. It recommended that the adult social care funding system in England needed urgent and lasting reform because people are unable both to plan ahead to meet their future care needs and unable to protect themselves against very high care costs. The Commission also highlighted the limited availability and choice of financial products for costs of future care.
- 2.2 The first part of the Care Act sets out the reforms for the adult social care system, with a significant impact on Local Authorities (LAs). Parts 2 and 3 introduce a legislative response to the Francis Inquiry into the failings at Mid-Staffordshire Hospital Trust and establish new non-departmental bodies of Health Education England and the Health Research Authority.
- 2.3 The Act passed into law in May 2014. Draft regulations and statutory guidance (part one) were published in June for consultation. Finalised guidance and regulations is expected in October 2014, for implementation in April 2015. Draft guidance for the 'Care Cap' will be published later this year and implementation is from April 2016. Key areas and impacts include:

2.4 General Duties and Universal Provision

Timeline: from April 2015

Wellbeing: Local LAs must promote wellbeing and actively seek improvements when carrying out any of their care and support functions in respect of a person – this includes from provision of information and advice to reviewing a care and support plan.

Impact: *The Act requires that wellbeing is embedded into all aspects of the Council's adult social systems, however due to the complex nature of the Act and the broad definition of 'wellbeing', there is an implication that wellbeing will need to be at the heart of all Council services.*

Prevention: The Act requires local authorities to ensure the provision or arrangement of services, facilities or resources to help prevent, delay or reduce the development of needs for care and support. This can include 'universal' services such as promoting healthier lifestyles.

Impact: *This reflects the Council's commitment towards effective prevention and early intervention, but enshrines it as a duty throughout all aspects of care and support.*

Information and Advice: There is a duty on LAs to provide a comprehensive information and advice service, so that people know what type and range of care and support is available, how to access that care and support, where they can find independent financial advice about care and support and how they can raise concerns about the safety or wellbeing of someone who has care and support needs.

Impact: *Significant development work is required to identify existing gaps and where appropriate commission new services, to ensure citizens receive information about universal wellbeing and prevention services and signposting services, including independent financial advice.*

Marketing shaping and provider failure: LAs' responsibilities around market provision have been strengthened and is a driver for establishing a wide range of sustainable high-quality care and support services that is available in local communities. There will also be new responsibilities in place if care providers should fail where LAs will have temporary responsibility to ensure both residential and domiciliary care continues, regardless of who pays for the care.

Impact: *Generally this expands the Council's current market oversight role, although a better understanding of the relationship between the Care Quality Commission and LAs is required.*

2.5 **First Contact and Identifying Needs**

Timeline: from April 2015

Assessment: All individuals are entitled to receive an assessment of eligibility for care and support and, if relevant, a care plan based on needs. Individuals can ask the LA to arrange care irrelevant of whether or not the individual or the LA is responsible for funding care. Assessments must be outcome focused, strength based and holistic. There is an increased requirement to ensure independent advocacy is provided. Eligibility for care must be identified using the new national framework.

Impact: *We are confident with some adjustment current assessments will meet legal requirements but an understanding of the final guidance is needed. The increase need for advocacy services will need to be scoped.*

Carers: LA will now not only have to complete carer's assessments but also be under a duty to meet carers' eligible needs. Carers can be eligible for support in two ways firstly to help them continue with their caring role and secondly their caring role is having a significant impact on their wellbeing and is having an adverse effect on their life.

Impact: *Currently we meet the needs of carers who are caring for citizens who are eligible. Modelling work is taking place to estimate the number of assessments required, of which there is likely to be an increase.*

2.6 Charging and Financial Assessment

Timeline: April 2015

Deferred payments: People will not have to sell their home to pay for residential care whilst they are still alive. However, LAs will be able to charge interest to cover their costs.

Impact: *Deferred payments are not new for the Council, however it has not been general or promoted practice. Therefore there is potential for a greater administrative burden in keeping track of the value of the property and financial implications, particularly in the early stages.*

Timeline: April 2016

Cap on care costs: The cap sets a limit how much people pay towards their care costs, with the local authority (LA) paying the full cost thereafter. Individuals in residential care will be expected to contribute £12k annually to daily living costs (not part of cap). The cap will be set depending on the age of the person when they are assessed as having eligible needs e.g. £72k for state pension age, £0 for those aged 18. Contributions to the cap will be tracked through a 'care account' managed by the LA. The Act provides people with a legal entitlement to a personal budget and it consolidates the existing legislation on direct payments – whereby LAs must provide direct payments to with people with capacity.

Impact:

- *More people will want a care assessment in order to start contributing towards the cap (self-funders) and more people are likely to qualify for support. At present numbers and costs unknown – modelling work is underway to estimate this.*
- *It is not yet known how the cap will be applied to citizens with eligible needs of 'working age'.*
- *Care accounts will be a new administrative burden for LAs and require the development and investment in IT systems.*
- *Nationally £470m Government funding has been allocated for 2015/16 to help implementation. There is no additional funding beyond this, although if funding was insufficient the Government has indicated guidance and regulations may be revised.*
- *As implementation for this part of the Act is post General Election 2015, there is potential for change. In the last stages of the Care Bill, the Labour Party withdrew its support, citing that that it did not address the under-funding of adult social care or protect individuals from large care costs, including living costs.*

2.7 Person Centred Care and Support Planning

Timeline: from April 2015

Care and support planning/personal budgets: The Act places a duty on LAs to provide a care and support plan. The individual must be involved in the development of their plan and it must be periodically reviewed. Citizens and carers can have a joint care and support plan.

Direct payments: Using the information from the personal budget, the person has a legal entitlement to request a direct payment. The local authority must provide a direct payment to someone who meets the conditions in the Act and regulations.

***Impact:** Previously only direct payments have had a place in law. Care and support planning and personal budgets, have only been set out in guidance. The Council currently provides care and support plans and direct payments. The Direct Payment policy will be refreshed.*

Transition: The Act says that if a child, young carer or an adult caring for a child (a “child’s carer”) is likely to have needs when they, or the child they care for, turns 18, the local authority must assess them if it considers there is “significant benefit” to the individual in doing so. This is regardless of whether the child or individual currently receives any services. The Act gives local authorities a legal responsibility to cooperate, and to ensure that all the correct people work together to get the transition right.

***Impact:** Current practice and operational processes are being checked for compliance. Much work has already taken place as part of the implementation of the Children and Families Act 2014.*

Moving between areas - inter local authority and cross-border issues: The Act outlines a process to be followed so that LAs know when someone wants to move areas, and what must happen to make sure that their needs are met when they arrive in the new area and that care remains continuous. There are also changes to ordinary residence and responsibilities of the placing authority widen to include supported living and shared lives schemes.

***Impact:** Current practice and operational processes will be considered against the final guidance to ensure compliance. A clear policy will need to be developed and possible changes to IT systems may be required to allow easier transfer of information to other LAs.*

2.8 Integration and Partnership Working

Timeline: April 2015

The Act requires greater integration and co-operation between the NHS, care and support, and the wider determinants of health such as housing. This relates to the principles of wellbeing and prevention. LAs must promote integration between care and support provision, health and health related services, with the aim of joining up services. LAs and their partners must also cooperate where this is needed in the case of specific individuals who have care and support needs.

***Impact:** The Council is already on this journey through the work of the Health and Wellbeing Board and the partnership work Nottingham City Clinical Commissioning Group. The Act provides the legislative framework for the Better Care Fund and enshrines integration and partnership working in law.*

Adult Safeguarding: The Act creates a legal framework requiring LAs to establish Safeguarding Adults Boards with local partners, with public plans, annual reporting and clear processes for investigating suspected abuse or neglect.

***Impact:** Current practice and operational processes, including for the Board, are being checked against the guidance to ensure compliance.*

Prisons: The Act establishes that the local authority in which a prison, approved premises or bail accommodation is based will be responsible for assessing and meeting the care and support needs of the prisoners residing there.

Impact: *This is a new area of work and consideration needs to be given to how best to identify those in need of a care assessment and how to deliver those assessments in secure settings, as well as meet other duties such as continuity of care and advocacy. The speed of transfer and movement of prisoners between institutions and a cross local authority boundaries is a key issue that will have an impact on the delivery of these duties.*

3. OTHER OPTIONS CONSIDERED IN MAKING RECOMMENDATIONS

N/a

4. FINANCIAL IMPLICATIONS (INCLUDING VALUE FOR MONEY/VAT)

4.1 Duties under the Care Act will increase the council's costs significantly, with potentially high levels of set up cost in terms of IT, undertaking an increased number of assessments and increased administrative burdens going forward. The detailed financial modelling that is currently taking place will be essential to enable us to understand the financial risks going forward.

4.2 The Council has been allocated an implementation grant of £125k. Additional funding for 2015-16 will be allocated for costs associated with social care in prisons, deferred payments and additional assessments and is currently under consultation. The Better Care Fund has an allocation of £840k for Care Act duties, which includes a contribution from the Council. Funding for the cost of the care cap has not been finalised.

5. RISK MANAGEMENT ISSUES (INCLUDING LEGAL IMPLICATIONS AND CRIME AND DISORDER ACT IMPLICATIONS)

5.1 The Corporate Risk Specialist has drawn up initial risks to be included in the corporate risk register, as below. The next steps are to establish actions and mitigations to these risks, with input from programme leads to ensure all risks are considered and managed.

- *The government fails to set aside adequate funds to meet the council's additional costs arising from implementation of, and compliance with, the Care Act impacting the financial sustainability of the service and the MTFP.*
- *That the implementation of the Care Act significantly increases the service workload processing cases to determine eligibility during the window for self funders to register with the LA in 2015/16 impacting the timeliness of assessments, the quality of service provision and increasing processing costs.*
- *Changes in the Act relating to deferred payments raises the risk that there will be a rise in requests with substantial upfront care costs which cannot be recovered in the short to medium term against assets that are not control by the Council.*
- *Existing software is not adequate to meet the requirements of the Care Act with the risk that there is insufficient time to procure a replacement or develop existing software/processes prior to the Act coming into effect in 2015/16 the impact of*

which could be a failure to comply with statutory requirements, increased procurement/ development costs, compromised ICT implementation and service quality.

6. EQUALITY IMPACT ASSESSMENT

Has the equality impact been assessed?

Not needed (report does not contain proposals or financial decisions)

No

Yes – Equality Impact Assessment attached

Due regard should be given to the equality implications identified in the EIA.

7. LIST OF BACKGROUND PAPERS OTHER THAN PUBLISHED WORKS OR THOSE DISCLOSING CONFIDENTIAL OR EXEMPT INFORMATION

[Care Act 2014: Draft regulations and guidance](#)

[Care Act - factsheets](#)

[Caring for our future: reforming care and support White Paper](#)

[Dilnot Commission on the Funding of Care and Support](#)

8. PUBLISHED DOCUMENTS REFERRED TO IN COMPILING THIS REPORT