

Adult Social Care Scrutiny Commission Report

20 November 2014

Implementing the Care Act 2014

Lead Director: Tracie Rees



City Mayor

Useful information

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■ Summary

1.1 The purpose of this report is to provide ASC Scrutiny Commission with an overview of the key implications of the Care Act 2014 and progress so far in planning for the implementation of the changes.

1.2 The Care Bill gained royal assent on 14th May 2014 and Statutory Guidance and Regulations, which support the Act were released on 23 October 2014.

1.3 It is proposed that further reports are submitted to the ASC Scrutiny Commission detailing the Council's readiness for implementing the changes, as appropriate. This will include the impact on operational service delivery and cost implications.

1.4 The Act provides the legislation needed to enact recommendations from various national policy reviews. It has been described as the biggest change to Adult Social Care (ASC) in the last 60 years, in terms of scope, ambition, and the impact on local authority practice and resources.

The Care Act 2014 is intended to achieve 4 things:

- To create the statute needed to enact the recommendations contained in the White Paper: *Reforming Care and Support: Caring for our future*
- Implement the recommendations on reforming the funding of care and support (Dilnot) (*Principle- No one should have to sell their home during their lifetime to pay for care*)
- Meet the recommendations of the Law Commission in its report on modernising Adult Social Care legislation
- To enact elements of the government's response to the Mid-Staffordshire NHS Foundation Trust Public Enquiry (Francis)

1.5 The majority of the changes are set to take place in April 2015, with the reform of funding due to take effect from April 2016. The key changes are:

- New statutory responsibilities for Prevention, Information and Advice (including advice on paying for care)
- New duty for Market Shaping – diversity and quality of provision
- New Market Oversight and provider failure regime
- Delegation of local authority functions
- New Inspection, regulation and rating regime (CQC) Oct 2014
- National eligibility framework for England
- Funding reform - a proposed cap of £72,000 lifetime care costs from April 2016 for working age adults. New 'Care Accounts'
- Universal deferred payment scheme
- Carers – recognised in the same way as those they care for
- Transition from Children Services

- Continuity of support when an adult moves area
- Statutory requirement to have a Safeguarding Adults Board
- To make provision about integrating care and support with health services; and for connected purposes
- Establishment of the Better Care Fund mechanism to promote joint working between the NHS and care and support services.

1.6 More information relating to the areas of change are detailed in the supporting information at paragraph 3.4 to 3.15 and a summary of the changes and potential risks are included at paragraph 3.16 and 3.17.

1.7 Details of the funding allocation from Government are expected to be finalised in October 2014, however, there is likely to be major financial implications for the Council and cost modelling is taking place to estimate the impact of increased assessment and support planning activity for carers and self-funders, as well as the impact of the new eligibility threshold.

1.8 All local authorities are required to complete a regular stock-take survey, undertaken by the Local Government Association, Department of Health and ADASS to determine the current state of readiness, and is submitted for national monitoring. The first stock-take was submitted by Leicester City Council on 21st May 2014 and the second on 23 September 2014. Results for all local authority stocktakes can be found on the [local government care and support reform website](#).

1.9 In terms of Governance arrangements a Programme Board has been established that has a number of work-streams reflecting the major areas of change to manage the implementation. This Board will report to the ASC Transformation Board, which in turn provides a monthly report to the Corporate Portfolio Management Office (CPMO).

2 Recommendations

2.1 The ASC Scrutiny Commission is asked to:

- a) Note the progress to date on implementation of the Care Act 2014
- b) Agree that further reports will be presented to the ASC Scrutiny Commission once the final regulations and guidance has been analysed and the implications and costs are known.

3. Supporting information including options considered:

Background to the Care Act

3.1 It is an Act to make provision 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; to make provision about integrating care and support with health services; and for connected purposes.

3.2 The Act will transform the practice of adult social work and care in England when it is implemented in April 2015. This law, alongside the Mental Capacity Act 2005, will be the one that most shapes social care practices in England.

3.3 It will also consolidate relevant provisions from the National Assistance Act 1948, Chronically Sick and Disabled Persons Act 1970, NHS and Community Care Act 1990 and carers' legislation into a single statute.

3.4 The following information provides an overview of the different elements of the Act.

3.5 General responsibilities

- There is an explicit requirement for councils to consider **people's well-being** when commissioning services. Local authorities will need to promote wellbeing in all decisions regarding an individual's care needs.
- It emphasises the need to **prevent and reduce** care and support needs. Local authorities will also have to promote preventative services, which could help reduce or delay the development of care and support needs.
- It sets out new duties on local authorities to join up care and support with health and housing via the Better Care Together programme.
- There is a requirement for **universal information and advice**, including independent financial advice, which is available for all people who request it and not just those with eligible needs. This is to help people understand what support they'll need to help them better plan for the future

3.6 Assessing needs

- For the first time **carers** have the same rights to assessments and care services from local authorities as those they care for.
- There will be a need for **independent advocacy** for people who need help to exercise their rights to social care.
- It introduces a **new national eligibility threshold** for care and support. This will replace local authorities setting their own thresholds. People found to be ineligible will need to receive written advice on 'what can be done to meet or reduce the needs'

3.7 Funding and charging

- From April 2016 there will be a **cap on lifetime costs of care (the proposed cap is £72,000)**, introduced so that people who fund their own care will not have to pay to meet their eligible needs beyond this level. A lower cap for people of working age who develop care needs before retirement age (details are still being worked out). A zero cap for people aged 18 with eligible needs; they will receive free care and support to meet those needs for the rest of their lives. The

Government is considering extending this to 25.

- There will be the introduction of **individual care accounts** to keep an up to date record of the adult's accrued costs.
- And an increase to £118,000 on the upper threshold for receiving means tested support.
- It sets out a **universal deferred payment scheme** so that people will not have to sell their home in their lifetime to pay for residential care.
- It **gives new rights to self-funders** - requires the local authority to give everyone who has eligible care needs but where the local authority is not meeting the needs an independent personal budget and independent Care Account

3.8 Continuity of care

- Places obligation on sending councils for the first time to notify the receiving council if a person expresses intent to move.

3.9 Safeguarding

- Introduces a new adult safeguarding framework, including the creation of an Adults Safeguarding Board.

3.10 Transition from Children Services

- Sets out a new range of duties to support transitions from children's to adults services.

3.11 Market Shaping (diversity and quality of provision)

- A new duty requiring local authorities to promote the diversity and quality of local services, so that there is a range of high quality providers in all areas allowing people to make the best choice to satisfy their own needs and preferences for all residents including self-funders and direct payment recipients.

3.12 Market Oversight and provider failure

- It introduces a new regime to oversee the financial stability of the most hard to replace care providers, and ensure that care will not be interrupted if providers fail.

3.13 Monitoring standards in care provision by the Care Quality Commission (CQC)

- It sets out new powers for the chief inspector of social care to hold poor-performing providers to account. Services in health and care are to be inspected from October 2014.
- Sets out Ofsted-style ratings for hospitals and care homes so that patients and the public can compare organisations or services in a fair and balanced way and make informed choices about where to go.
- Makes it a criminal offence for health and care providers to supply or publish

false or misleading information.

3.14 Delegation of local authority functions

- This allows local authorities to authorise a person to exercise certain functions on its behalf and could pave the way for providers to support assessment and support planning functions.

3.15 Learning and Development

Skills for Care, in partnership with the National Skills Academy for Social Care and the College of Social Work, has been asked by the Department of Health to help identify and plan for the learning and development needs of the social care workforce in England. Training resources will be available October 2014.

3.16 Summary of implications for the Council

The Act represents opportunities for significant improvement and change in ASC. It will transform the way the current ASC system operates and will require the Council to change processes, systems, practice and culture. However, it provides the opportunity, not currently available, to potentially streamline processes and to outsource areas of social work, which up until now have had to be provided internally.

3.17 Leicester is relatively well placed to respond to many areas proposed in the Act and will draw upon existing work that is underway. However, the Act also presents a number of challenges with risks arising from the new duties and extended responsibilities, which can be summarised as follows:

- Potential of legal challenge as people seek to test the validity of the new legislation and how we interpret the law in to social work practice
- Increase in care costs following the introduction of the cap in 2016
- Increase in costs and loss of income arising from the revised financial thresholds for accessing social care funding
- Increase in demand for assessments, support plans and reviews
- Potential increase in number of service users and carers following changes to assessment entitlement and eligibility
- Potential increased demand for deferred payments may increase financial risks and liabilities
- Negative impact on performance measures
- Unknown impact of the changes to the provider market as higher fees are traditionally paid by self-funders
- A tight schedule for implementation with regulations and statutory guidance finalised 23 October 2014 and implementation of most of the Act by April 2015

- Additional pressures in social care by April 2015 onwards in the areas of:
 - assessment and care management
 - financial assessments, set up and monitoring of care accounts and deferred payments

3.18 Options Considered

The Council has no option but to implement the Care Act 2014, however, it may be possible to look at different delivery mechanisms in the future. This is something that will be considered by the Care Act Programme Board as the changes are implemented for each area.

4. Details of Scrutiny

4.1 ASC Care Scrutiny Commission 20 November 2014

5. Financial, legal and other implications

5.1 Financial implications

5.1.1 Nationally there is a great deal of uncertainty around the cost and funding of the Care Act. There is a strong belief within local government that the costs have been underestimated. Some highly provisional figures for the City Council (LCC) have been provided at Appendix A. These will need to be reviewed in the light of further government announcements and further national and local modelling.

5.1.2 Each local authority has received £125k to contribute to the cost of preparation and implementation in 2014/15.

5.1.3 Indicative LCC funding in 2015/16 for the Care Act is £2,069k. Financial modelling is being carried out by local authorities under the guidance of the Local Government Association and The Association of Directors of Adult Social Care. Current indications are that the funding will be inadequate.

5.1.4 Councils take on further responsibilities in 2016/17 around funding reform (eg the £72k cap on care costs). This brings even greater uncertainty. The government has not announced the formula it will use to distribute the funding. In the meantime LCC and all other LAs are engaged in modelling local costs.

5.2 Legal implications

5.2.1 There are no specific legal implications in respect of this report, which at this stage sets the scene ahead of the operational changes that may be subject to further decision-making in the future.

The Care Act 2014 consolidates piecemeal Adult Social Care Legislation into a Statute and includes a number of significant policy reforms for care and support. The Act will

come into force in April 2015, although some provisions will be implemented in April 2016 (clauses 15, 16, 28, 29 and 72)

The legal implications of the Care Act 2014 itself are far reaching; the Local Authority must implement and abide by the Act to its full extent. Failure to do so could result in challenges to the Local Authority, by way of appeal under Section 72 and perhaps Judicial Review which would have cost implications.

There may be legal implications in respect of further reports that are presented to the ASC Scrutiny Commission once the final regulations and guidance has been analysed and further legal advice should be sought at this stage.

Amy Owen-Davis, Solicitor
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5.3 Climate Change and Carbon Reduction implications

N/A

5.4 Equality Impact Assessment

5.4.1 The Department of Health carried out an Equality Impact Assessment of the Care Act and a link to their summary is provided below. All the projects within the care programme work will carry out an equality impact assessment separately when more details of the Act are available. The project EIAs will be reported to the Programme Board.

Yasmin Mataria-Jenkins
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5.5 Other Implications (You will need to have considered other implications in preparing this report. Please indicate which ones apply?)

None noted

6. Background information and other papers:

Press release: [Care Bill becomes Care Act](#)

Press release: [Government's Care Bill to give people peace of mind in hospital, care homes and their own homes](#)

News story: [Final Care Act Published](#)

Care Act - [Statutory Guidance](#)

Factsheets: [The Care Act: Factsheets](#)

Website: [Care Act 2014](#)

Documents: The Government published a series of Impact assessments alongside the Care Act

7. Summary of appendices:

Appendix A :Care Bill Implementation Stocktake – Spring 2014 – Leicester City Council

8. Is this a private report (If so, please indicated the reasons and state why it is not in the public interest to be dealt with publicly)?

No

9. Is this a “key decision”?

No

10. If a key decision please explain reason

In determining whether it is a key decision you will need consider if it is likely:

- to result in the Council incurring expenditure which is, or the making of savings which are, significant having regard to the Council’s budget for the service or function to which the decision relates.
- to be significant in terms of its effects on communities living or working *in two or more wards in the City*.

Expenditure or savings will be regarded as significant if:

- (a) In the case of additional recurrent revenue expenditure, it is not included in the approved revenue budget, and would cost in excess of £0.5m p.a.;
- (b) In the case of reductions in recurrent revenue expenditure, the provision is not included in the approved revenue budget, and savings of over £0.5m p.a. would be achieved;
- (c) In the case of one off or capital expenditure, spending of over £1m is to be committed on a scheme that has not been specifically authorised by Council.

In deciding whether a decision is significant you need to take into account:

- Whether the decision may incur a significant social, economic or environmental risk.
- The likely extent of the impact of the decision both within and outside of the City.
- The extent to which the decision is likely to result in substantial public interest
- The existence of significant communities of interest that cannot be defined spatially.

Summary of Costs and Funding for the Care Act

Funding and Expenditure in 2014/15

The only additional funding being made available is £125k to each Local Authority, to contribute towards the cost of managing the change programme. Given the extent of officer time being spent on preparing and implementing the Care Act, the actual expenditure in 2014/15 will exceed this. However, much of this is being absorbed within officers' existing roles.

Funding and Expenditure in 2015/16

The costs in 2015/16 relate to those parts of the Care Act that come into effect in April 2015, plus costs relating to preparatory work for the reforms which take effect in April 2016.

The table below summarises the current expected funding, forecast costs, and the consequent funding gap. The funding gaps have been highlighted as part of the budget setting process for 2015/16.

The funding for 2015/16 comes partly from the Better Care Fund (BCF) for the Social Care reforms, and partly from additional government funding. The consultation on the formulae for allocating the government funding recently closed, so this can only be considered indicative at this time.

The forecast costs represent current estimates, and have been informed by local demand modelling and the use of the Lincolnshire model.

2015/16 Summary Position	National Funding	Leicester Funding	Est. Costs	Funding Deficit/ (Surplus)
Social Care Reforms (BCF)	£135.9m	£527k	£1,229k	£702k
Prisons Reforms	£11.2m	£55k	£75k	£20k
Deferred Payment Agreements (DPA)	£108.5m	£515k	£40k	(£475k)
Funding Reforms (excl. DPA)	£175.0m	£663k	£472k	(£191k)
Capital Costs	£50.0m	£309k	£309k	£0k
Total	£480.6m	£2,069k	£2,125k	£56k

(Note: it was previously assumed that the actual cost would be lower than that shown above. This was factored into the budget position for ASC and as a result there is a further pressure for budget purposes of £742k).

Funding and Expenditure in 2016/17

The funding picture for 2016/17 is complicated because it is the first year in which the £72k cap on care costs will be in place, as well as bringing in significant changes to the asset thresholds upon which financial assessments of customer's charges are based. Whilst the government has committed to fully funding local authorities for these costs, there are doubts over whether the full cost has been recognised at a national level.

The funding in the table below has been based on the government's impact assessment of the Care Act.

There are a number of models being used by authorities to help estimate the likely costs of the Funding Reforms. Leicester has used the Surrey model, Lincolnshire model and its own local model to inform estimates of the cost of the Funding Reforms. Both the funding and cost estimates in the table below should only be considered as indicative at the current time; there will be significant changes to these estimates as project work progresses and as better information about funding allocation becomes available.

2016/17 Summary Position	National Funding	Leicester Funding	Est. Costs	Funding Deficit/ (Surplus)
Social Care Reforms (BCF)	£171.1m	£527k	£1,596k	£1,069k
Prisons Reforms	£10.3m	£50k	£70k	£20k
Deferred Payment Agreements (DPA)	£145.4m	£691k	£40k	(£651k)
Funding Reforms (excl. DPA)	£660.0m	£2,500k	£3,560k	£1,060k
Capital Costs	£0m	£0k	£0k	£0k
Total	£986.8m	£3,768k	£5,266k	£1,498k

The deficit on the Social Care reforms in 2016/17 is caused largely by pressure in relation to Carers; part of this is the cost of undertaking assessments for Carers, but a much greater pressure is predicted in the provision of support to meet Carers' eligible needs.

Funding and Expenditure in 2017/18 Onwards

In 2017/18 it is anticipated that there will be a funding gap of £1,829k. However, the further ahead one looks, the greater the level of difficulty in projecting both costs and funding. Much will depend on the behaviour of self-funders and carers, which is difficult to predict.
