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| Meeting | Safeguarding Overview and Scrutiny Committee |
| Date | 10 th April 2014 |
| Subject | The Care Bill Update Report |
| Report of | Cabinet Member for Adults |
| Summary of Report | This report sets out the main points from the forthcoming changes to social care legislation as set out in the Care Bill. This includes adult safeguarding in primary legislation for the first time. The report sets out implications for Barnet and the approach being taken to prepare for the new requirements. |

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| Officer Contributors | Dawn Wakeling, Adults and Communities Director |
| Status (public or exempt) | Public |
| Wards Affected | All |
| Key Decision | No |
| Reason for urgency / exemption from call-in | N/A |
| Function of | Committee |
| Enclosures | None |
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1. RECOMMENDATION

- 1.1 That Committee consider the report and the impact of the new legal framework on safeguarding and adult social care and make appropriate comments and/or recommendations to the Cabinet Member for Adults.

2. RELEVANT PREVIOUS DECISIONS

- 2.1 Special Safeguarding Overview and Scrutiny Committee on 24 September 2012 received a report on the three key adult social care policy documents published in July 2012: Caring for Our Future (White Paper); the draft Care and Support Bill; and the Government's interim statement on funding reform for Adult Social Care. The Committee endorsed Officers undertaking further work to assess the potential impact of these policy changes on Barnet.
- 2.2 Cabinet on 18 April 2013 received a report on describing the main impact of the White Paper, Caring for our Future, and the draft Care & Support Bill, both published in July 2012; and of the policy statement on Care and Support Funding Reform, presented to Parliament on 11 February 2013. The report set out the implications for Barnet based on empirical data and modelling where appropriate.
- 2.3 Health and Well Being Board on the 27 June 2013 received a report which summarised the implications of the Care Bill and a further report on 21 November 2013 to update the Board on progress made locally to prepare for the implementation of the new legislation.

3. CORPORATE PRIORITIES AND POLICY CONSIDERATIONS

- 3.1 The 2013/14 Corporate Plan objectives: "Support families and individuals that need it – promoting independence, learning and wellbeing"; and "Promote a healthy, active, independent and informed over 55 population in the borough so that Barnet is a place that encourages and supports residents to age well" accord with the underpinning principles set out in the White Paper. The Council's future plans for adult social care will need to be within the policy and legal framework set out in the White Paper and draft Care Bill.
- 3.2 The Health and Wellbeing Strategy 2012-15 echoes many themes of the new policy framework with its emphasis on promoting independence and wellbeing whilst ensuring care when needed. The White Paper agenda links directly with three of the main planks of the strategy: Wellbeing in the community; How we live; and Care when needed. In particular 'Care when needed' identifies plans for developing increased independence for older people, improving support for residents in care homes and improving support for carers.

4. RISK MANAGEMENT ISSUES

- 4.1 Whilst the overall direction set out in the Care Bill is positive for users and carers, an initial review of the Care Bill has identified some potential risks for the Council in implementing its requirements. These are particularly the

resource and financial implications of providing enhanced services to carers, to people who fund their own care along with the deferred payments scheme.

- 4.2 A number of new statutory requirements and duties are set out in the new policy and legislative framework and there would be risk for the council in failing to meet these new statutory requirements.
- 4.3 The demographic challenges and increasing complexity of need faced by adult social care are already being addressed through a focus on prevention and early intervention, with improved information and advice, and better access to telecare and enablement for adult social care key mitigating strategies. However, with an increased focus on an integrated care and accommodation approach, a council wide response will need to be developed that plans for a range of private and social housing that is able to meet different people's needs and requirements and maximises the opportunity provided by recent changes to the Housing Revenue Account. This approach would mitigate the demand and financial pressures that will continue to be faced by adult social care.

5. EQUALITIES AND DIVERSITY ISSUES

- 5.1 The Equality Act 2010 places a duty on public authorities to have due regard to eliminating unlawful discrimination, advancing equality and fostering good relations in the contexts of age, disability, gender reassignment, pregnancy and maternity, religion or belief and sexual orientation.
- 5.2 On 1 October 2012, new provisions in the Equality Act came into force banning age discrimination in health and social care. This is in line with the duties incumbent on all public bodies through the Equalities Act 2010. Adult Social Care works within the Council's policy framework for equalities, offers services to users within this framework and undertakes relevant positive action to ensure social care is accessible to groups with different equalities characteristics; for example, producing easy-read information for people with learning disabilities and offering interpreters for service users.
- 5.3 Age discrimination should be considered broadly: younger people may perceive that older people receive more favourable treatment from services as well as older people perceiving that they are less favourably treated. The prohibition does not mean that all age groups should therefore be offered identical supports or services. However, it does require the council to have a transparent and fair rationale for different approaches or supports offered to different age groups, just as it already does for current positive action in place, such as providing interpreters.
- 5.4 However, there is a general risk from this prohibition applicable to all councils, which may face an increased level of potential legal challenge from individual users or groups, using this prohibition as its basis. Nationally, there have been legal challenges based on equalities legislation: for example, the 2011 challenge to Birmingham City Council on its proposed change to adult social care eligibility criteria.

5.5 In order to ensure Barnet Council is compliant with this requirement, consideration will need to be made of existing social care supports specific to different age groups, along with wider universal services, to ensure there is a transparent and fair approach to the offer to social care users based on age.

6. USE OF RESOURCES IMPLICATIONS (Finance, Procurement, Performance & Value for Money, Staffing, IT, Property, Sustainability)

6.1 It is clear that the reforms will have a significant impact on social care locally. However, it should be noted that it is not possible at this stage to predict with precision the demand changes that these reforms will bring. Modelling of costs and demand in relation to the Bill was presented to the Health and Wellbeing Board in June 2013 and is being further revised as new information becomes available. This modelling indicated that the potential additional financial pressure on the authority as a result of these changes to social care is significant. The additional annual cost of implementing the proposals could be in excess of £10m per annum and, if government funding to support this falls short, this will result in a significant shortfall for the authority. The comprehensive spending review of June 2013 identified national 'new burdens' funding to be made available to local authorities to address additional costs arising from the Care Bill. Any shortfall in national funding would require the authority to re-prioritise resources from other areas, earmark additional business rate or Council Tax income or identify other measures to balance the budget.

6.2 It is worth noting that the Local Government Association along with other representative bodies, continues to lobby central government on the costs of the reforms, based on the view that the funding made available to meet the costs of the reforms will not cover their full impact. London Councils' 2013 analysis estimated that the cost of the social care funding reforms (i.e. the cap on care costs and changes to capital limits) will cost London authorities £1 billion per annum. The additional impact in London is related to regional variations in costs of care. Prices for care tend to be higher in London than elsewhere, meaning that service users will reach the Cap levels earlier than in other areas.

6.3 The Council has also received notification of a provisional allocation for 2015-16 for Adult Social Care new burdens of £1.719m; the final allocation will be known in 2014/15.

7. LEGAL ISSUES

7.1 The current social care legislation has evolved over a number of decades and in a piecemeal manner. As with the Equality Act 2010, the draft Care Bill sets out to consolidate several pieces of legislation and will replace over a dozen different pieces of legislation with one Act. The new legislation is designed to be less complex and easier to apply for practitioners within the council, their legal advisers and, in the case of legal challenges, the Courts.

- 7.2 The Bill is intended to give effect to the policies set out in the White Paper *Caring for our future: reforming care and support*, to implement the changes put forward by the Commission on the Funding of Care and Support, chaired by Andrew Dilnot, and to meet the recommendations of the Law Commission in its report on Adult Social Care to consolidate and modernise existing care and support law. The Bill also gives effect to elements of the Government's initial response to the Mid Staffordshire NHS Foundation Trust Public Inquiry that require primary legislation.
- 7.3 The Bill contains four parts. Part 1 sets out the legal framework for the provision of adult social care in England, including the general responsibilities of local authorities and the provisions for assessments, charging, establishing entitlements, care planning and the provision of care and support. This includes provision to create a cap on the costs of care and for local authorities to enter into deferred payment agreements. There is a new requirement to establish a Safeguarding Adults Board. This puts into primary legislation for the first time, the local authority's duties in respect of adult safeguarding.
- 7.4 Part 2 relates to Care Standards. There is a requirement to introduce a duty of candour on providers of health and social care registered with the CQC. There are a number of provisions in relation to the role of CQC, including ensuring that it is more autonomous and independent from the Secretary of State.
- 7.5 Part 3 deals with Health and sets up two new non departmental health bodies.
- 7.6 Part 4 deals with technical matters to ensure proper operation of the legislation.
- 7.7 The Bill has now completed all stages in the House of Lords and the Commons and is expected to become law in April 2014.

8. CONSTITUTIONAL POWERS (Relevant section from the Constitution, Key/Non-Key Decision)

- 8.1 The scope of Overview and Scrutiny Committees is contained within Part 2, Article 6, of the Constitution.
- 8.2 The Terms of Reference of the Scrutiny Committees are in the Overview and Scrutiny Procedure Rules (Part 4 of the Constitution). The Safeguarding Overview and Scrutiny Committee has within its terms of reference the following responsibilities:
- To scrutinise the provision of Adult Social Care services (including those who have physical disabilities, sensory impairment, learning disabilities, mental health needs or other special needs) to ensure that residents are safeguarded and supported to lead as independent lives as possible in their own homes.
 - To scrutinise the Council and its partners in the discharge of statutory duties in relation to safeguarding.

9. BACKGROUND INFORMATION

9.1 July 2012 saw the publication of the 'Caring for our future: reforming care and support' White Paper. The White Paper outlined the vision for a reformed care and support system, one that would:

- Focus on people's wellbeing and support them to stay independent for as long as possible.
- Introduce greater national consistency in access to care and support.
- Provide better information to help people make choices about their care
- Give people more control over their care.
- Improve support for carers.
- Improve the quality of care and support.
- Improve integration of different services.

9.2 On the 10th May 2013, the Care Bill was published, introducing legislation to provide social care protection and support to the people who need it most and to take forward elements of the government's initial response to the Francis Inquiry, to give people peace of mind that they will be treated with compassion when in hospital, care homes or their own home. The Bill brings together existing care and support legislation into a new, modern set of laws and builds the system around people's wellbeing, needs and goals. The Care Bill has, as its primary principle, a key element of the White Paper, stating at clause one of the Bill that the overriding principle of adult social care is to focus on the individual's wellbeing.

9.3 The Bill sets out new duties on local authorities to provide information and advice; along with preventative services that reduce the need for social care support. It introduces a national eligibility threshold for care and support for users and carers; along with new rights for portability of care when a service user moves to a new area. It introduces increased rights for carers, with national eligibility thresholds for carers and a right to review for the first time. It introduces a cap on the costs that people will have to pay for care. These have been set at £72,000 for older people and £0 (zero) for those who have eligible social care needs as they become 18. There will also be another level of cap for adults of working age, which is still to be announced. The Bill sets out a universal deferred payment scheme, for those with assets below £23,250, so that people will not have to sell their home in their lifetime to pay for residential care.

9.4 The Bill also raises the means test threshold for people with eligible needs. This means that people with higher levels of assets will be able to receive local authority support with the costs of care. The upper level will be £118,000 where the value of someone's home is counted (i.e. when they are to move to residential care). The means test threshold where the value of someone's home is not counted, (i.e. for community based care) will be £27,000, an increase of £4,000 above the current thresholds.

9.5 Changes to the Bill as it went through its later stages of the legislative process have included the following. Firstly, the introduction of new duties on Councils in the event of a financial failure of a local social care provider. Councils will be responsible for meeting the needs, on a temporary basis, of all users placed with a provider, including those placed by a different council or those funding their own care. This is a change from the current system, where Councils usually take responsibility only for those they have placed. Secondly, the introduction of the right to independent appeal against decisions on social care needs made by councils. This would give individuals who are not content with the result of their social care assessment, their assessed eligibility level, personal budget or support plan, the right to appeal the Council's decision through an independent process. It is anticipated that further details of many aspects of the Bill including these two aspects will be set out in secondary legislation (scheduled for publication in draft form in May) and in future guidance.

10. Current Progress

10.1 The Adults and Communities Delivery Unit has carried out an analysis of the Council's current status against the Bill's requirements and of relevant work in progress that also meets the requirements of the Bill. A formal work programme to address the requirements of the legislation is in the mobilisation stage.

10.2. The gap analysis is still evolving, but indicates that there are good foundations in place in many of the key Care Bill requirements: information and advice, safeguarding, prevention, carers and market shaping are already being addressed by Adults and Communities independently of the Bill. Further key programmes such as Health and Social Care Integration and IT replacement are also underway and have been identified as important in meeting the requirements of the Bill.

10.3 The Bill sets out several requirements for local authority adult safeguarding. This puts adult safeguarding on a statutory footing for the first time and enshrines in law much of the good practice adopted by Councils, building on the No Secrets statutory guidance. In the Care Bill, local authorities remain the lead agency for adult safeguarding. Adult Safeguarding Boards become statutory bodies, with the council, the NHS and the Police as the key statutory partners. The Adult Safeguarding Board is required to publish an annual report detailing its work over the previous year; and its forward work programme. Barnet already has an Adult Safeguarding Board, with membership from the Police, the NHS and the Council, with an independent chair. The Barnet Adult Safeguarding Board already publishes an annual report and its forward work programme, which is reviewed by this Committee as well as the Health and Wellbeing Board. The Bill also requires Councils to make safeguarding enquiries where it is suspected that a vulnerable adult may be at risk of abuse, including financial abuse. It also requires local authorities to conduct safeguarding adults reviews (SAR, the replacement term for serious case reviews) in circumstances where there is the need to learn lessons following incidents of harm or death of a vulnerable adult. Both these requirements set current good practice into law. Barnet has in place systems to make safeguarding enquiries, including for vulnerable adults who are not known to Barnet adult social care. Barnet already has a system for determining whether

to initiate a SAR, led by the independent chair of the Adult Safeguarding Board.

10.4 The overall draft programme is described in the table below.

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| Workstream | 1 Demand analysis and modelling |
| Aim | Ensure LBB is prepared for impact of care funding and care and support reforms in 2015 and 2016. |
| Workstream | 2 Assessment, support planning and eligibility |
| Aim | To ensure readiness for national eligibility criteria for users and carers, to introduce improvements to process for and communication of direct payments to ensure new requirements are met. To develop and implement new approaches to assessment and support planning to ensure sufficient capacity and effective risk mitigation arising from the likely increased take up of assessment due to the funding reforms. |
| Workstream | 3 The Care Account and measuring progress towards the cap |
| Aim | To implement an effective system for measuring progress towards the cap and providing the Care Account to residents. |
| Workstream | 4 Revision of fairer contributions policy |
| Aim | To implement the new national contribution policy for funding reform from 1.4.2016. |
| Workstream | 5 Carers |
| Aim | Prepare for introduction for new carers entitlements, review current offer/services for carers; ensure offer is consistent with ethos and requirements of care bill; introduce enablement for carers to reduce requirement for ongoing carers services/costs of funded care. |
| Workstream | 6 Prevention Information and Advice |
| Aim | To ensure LBB is compliant with new duties from the Care & Support Act. To include I&A, telecare, NSCSO, Public Health, private sector providers. Delay and reduce need for funded social care support through prevention services |
| Workstream | 7 Young people and working age adults |
| Aim | To consider and implement improvements to the LBB 'offer' to working age adults and young people with care needs, ensuring the requirements of the reforms are met. |
| Workstream | 8 Public awareness and communications |
| Aim | To raise awareness and inform the public how to take steps to prevent/prepare for future dependency and care needs. |
| Workstream | 9. Deferred payment |
| Aim | To have a universal deferred payment scheme in place on April 2015. This will replace the current scheme. |

10.5 We are taking forward the following activities as early priorities:

- Activity and financial modelling: As a result of the reforms, it is likely that increased numbers of Barnet residents who currently fund their own care will come forward for a social care assessment, a carer's assessment, support planning and a care account. To prepare for the reforms effectively, we need to model the rate at which demand for assessment and care planning will increase and over what timescale, to inform workforce and service planning. We also need to develop a robust financial model to enable the Council to manage the financial impact of the reforms. The outputs of this work stream will underpin several other work streams in the programme. In particular, it will enable officers to take forward the work stream on assessment, eligibility and support planning.
- Deferred payments: Although the Council has a deferred payment scheme in operation, the current scheme will need further development to meet new national requirements. Part of this work stream is identifying the financial implications of large scale take up of deferred payments and risk management of the implications.
- IT and infrastructure requirements: New IT systems within Adults and Communities are in the pre-procurement stage and given the lead in time for IT changes, Care Act requirements need to be factored in at the early stages.

11.0 List of Background Papers

11.1 Social Care Funding Reform and the draft Care & Support Bill: Implications for the London Borough of Barnet

<http://barnet.moderngov.co.uk/ieDecisionDetails.aspx?ID=4670>

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| Cleared by Finance (Officer's initials) | JH |
| Cleared by Legal (Officer's initials) | LC |