



## Adults & Safeguarding Committee

31<sup>st</sup> July 2014

<b>Title</b>	<b>Care Act 2014 : Consultation on the Statutory Guidance</b>
<b>Report of</b>	Karen Ahmed, Later Life Lead Commissioner and Karen Jackson, Assistant Director Adult Social Care
<b>Wards</b>	All
<b>Status</b>	Public
<b>Enclosures</b>	None
<b>Officer Contact Details</b>	Alan Mordue email: <a href="mailto:alan.mordue@barnet.gov.uk">alan.mordue@barnet.gov.uk</a> telephone: 020 8359 2596

### Summary

The Adults and Safeguarding Committee received a report on the implementation of the Care Act on 2 July 2014.

On 6 June, the Department of Health published the draft regulations and guidance for implementation of those care and support reforms and provisions which come into effect in April 2015. The consultation period on the drafts runs until 15 August 2014.

Following this consultation, the Department of Health intends to publish the final documents in October 2014 to allow local authorities six months to finalise preparations before the Act comes into force. The draft regulations will be laid before Parliament at the same time.

This report describes the draft regulations and guidance and outlines the role that Barnet has played in the national consultation process. It goes on to highlight the following areas where officers have concerns:

- resourcing the new duties,
- the lack of clarity in many areas,
- the need for greater direction in some areas.

Primarily the report seeks to update members on the consultation progress and offers them

an opportunity to comment.

## **Recommendations**

That the Committee note Adult Social Care's approach to the consultation and provide comment and feedback to the officers present.

## **1. WHY THIS REPORT IS NEEDED**

**1.1** A report on the implementation of the Care Act 2014 came to the Adults and Safeguarding Committee on the 2 July 2014.

**1.2** That report referred to the draft statutory guidance on the first tranche of duties which the Council will be required to implement from April 2015. Consultation on the 2016 regulations and guidance is scheduled to take place from October 2014.

### **1.3 Regulations and Guidance**

**1.3.1** The draft regulations and guidance relate to the care and support reforms and provisions in the Care Act which come into effect in April 2015.

**1.3.2** The draft regulations and guidance have been developed in collaboration with a number of expert reference groups comprising of:

- Users of care and support,
- Local authority staff,
- Voluntary sector organisations,
- Social workers,
- National representative bodies (including those drawn from local government).

**1.3.3** The draft guidance describes how the care and support system should operate in 2015/16. However the regulations and updated guidance to support implementation of the additional reforms which come into effect in April 2016 (for example, the cap on care costs); will be subject to a separate consultation, to be published later this year.

**1.3.4** In order to support delivery of this significant programme of reform there is a national Care Act Programme Management Office, in partnership between the Department of Health, the Local Government Association (LGA) and Association of Directors of Adult Social Services (ADASS).

### **1.4 Regulations**

**1.4.1** The Care Act contains the core legal duties and powers relating to adult social care. It also contains the regulation making these powers. These allow the Government to make secondary legislation (regulations) that provide more detail. The regulations will be laid before Parliament, and some of them will be debated in both Houses of Parliament.

### **1.5 Guidance**

**1.5.1** The statutory guidance is intended to provide local authorities with the information they need about how they should meet the legal obligations placed on them by the Act and the regulations. Local authorities are required to act under the guidance, which means that they must follow it, unless they can demonstrate legally sound reasons for not doing so.

1.5.2 The guidance will be used by the Council to plan care and support at a local authority level, as well as by practitioners. The guidance will also be used by people using care and support, their families, the voluntary sector and providers of care and support to help them understand the new system, and by courts in deciding whether a local authority has acted within the law.

## **2. REASONS FOR RECOMMENDATIONS**

### **2.1 Barnet's Participation in Consultation**

2.1.1 The Care Act 2014 will shape the way in which the Council is required to deliver adult social care for the foreseeable future and will have wide reaching implications for residents and the Council.

2.1.2 The Council is undertaking detailed preparation across 6 work streams in order to prepare for the Care Act and as such is well-placed to consider whether the draft regulations and guidance will support the Council to effectively meet its legal obligations through effective delivery of the Care Act.

2.1.3 The Council has been actively involved in reviewing the draft regulations and guidance because it provides an important opportunity to influence the documents which will inform how local authorities go about delivering these reforms.

2.1.4 The national Care Act Programme Management Office, working with the LGA, ADASS and the DH, organised nine regional events during June and early July to discuss the Care Act.

2.1.5 These events allowed local authorities an opportunity to hear directly from the DH the detail around the regulations and guidance, as well as to debate the key challenges that councils are facing as they prepare for the new legislation.

2.1.6 Invitations to these events were managed regionally to ensure a productive input to the consultation and a mix of local government, voluntary and commercial sector attendees. They formed only part of a wider consultation process and the DH is also setting up a range of meetings and discussions with different organisations on the regulations and guidance.

2.1.7 In addition to the regional events organised by the National Care Act Programme Management Office, Barnet has participated in the following groups reviewing specific areas of the Regulations and Guidance:

- Care Act Commissioning Leads Network
- Care Act Leads Network
- Finance Leads Network

## **2.2 Barnet Specific Highlights from the Consultation Exercise**

2.2.1 Generally speaking the guidance is welcomed and is felt to be very helpful in making explicit what was currently implicit in best practice such as transitions between adults and children's services. Changes are welcomed to the current approach such as the extension of direct payments to pay for families and relatives to administer schemes.

2.2.2 Many concerns have been identified with respect to resourcing the new duties. These include training for staff, the financial implications of fully implementing Direct Payments according to the guidance and the creation of new roles (for example, advocates for whom existing funding does not exist). Areas of prevention and well-being are felt to be too service-driven with a consequent lack of recognition for the contribution of local support networks. The list of tasks underpinning the national eligibility criteria are felt to be too defined and that there should be a focus on outcomes which enable the tasks to be defined by individual circumstances. With respect to charging, it is recommended that the 12 week disregard for residential care placements should be more flexibly available.

2.2.3 However, by far the majority of concerns identified concern the lack of clarity in many areas which present a potential risk to councils, together with the need for a greater degree for direction in those areas where local authorities have a duty to co-operate. More case examples would help implement the Care Act, for example in the area of person centred planning.

2.2.4 Clarity is required in the following areas:

- Advocates – what is their role, required training, experience, etc.?
- Nominated person - how does their role fit with that of an advocate, what experience and knowledge should they have?
- The relationship between assessment, support planning and delegated responsibilities.
- Does the government support the development of a national resource allocation scheme or not?
- More explicit definitions of accommodation in the guidance underpinning the moving between areas section.
- Continuity of care – there needs to be better defined guidance on the requirements to support this through the provision of recent (less than 12 months old) multi-disciplinary assessments, how equipment should be treated and practical guidance on how this should happen.
- Self-placement – what is the position of self-funders who move and place themselves in other areas?

2.2.5 Greater direction will be required in the following areas:

- The guidance on integration with health needs to be strengthened. There should be clearer reference to the Better Care Fund (BCF), the role of the Health and Well-Being Board and Joint Commissioning. Sanctions for non-compliance also need to be considered. Tools to help support the development of integration would also be welcomed. The general view is that the current guidance reflects current issues, rather than resolving them.

- The guidance on close working with education and welfare agencies e.g. JCP and DWP also requires strengthening and further clarification.

### **3. ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED**

3.1 None

### **4. POST DECISION IMPLEMENTATION**

4.1 Following the consultation, the DH intends to publish the final documents in October 2014 to allow local authorities 6 months to finalise preparations before the Act comes into force. The draft regulations will be laid before Parliament at the same time.

### **5. IMPLICATIONS OF DECISION**

5.1 The implications of the Care Act have already been set out in detail in the previous report submitted to Adults and Safeguarding Committee on the 2 July 2014.

5.2 The Committee's comments on the proposed response will inform Barnet's submission to the Department of Health's consultation.

#### **5.3 Corporate Priorities and Performance**

5.3.1 The 2013/14 Corporate Plan objectives: "Support families and individuals that need it – promoting independence, learning and well-being"; 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". LBB's future plans for adult social care will need to be within the policy and legal framework set out in the Care Act and its supporting Regulations and Guidance.

5.3.2 The Health and Well-being Strategy 2012-15 echoes many themes of the new policy framework with its emphasis on promoting independence and well-being whilst ensuring care when needed. The reform agenda links directly with three of the main planks of the strategy: Well-being 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.

#### **5.4 Resources (Finance & Value for Money, Procurement, Staffing, IT, Property, Sustainability)**

5.4.1 It is clear that the Care Act will have a significant financial impact on social care locally. These were detailed in the previous report to Committee. The response will present these for further consideration.

#### **5.5 Legal and Constitutional References**

5.5.1 The responsibilities of the Adults and Safeguarding Committee are contained within the Council's Constitution - Responsibility for Functions (Annex A)

- 5.5.2 The Adults and Safeguarding Committee is responsible for the following:
- Working with partners on the Health and Well-being Board to ensure that social care interventions are effectively and seamlessly joined up with public health and healthcare, and promote the Health and Well-being Strategy and its associated sub strategies.
  - Ensuring that the local authority's safeguarding responsibilities are taken into account.
- 5.5.3 The Care Act is designed to be less complex and easier to apply for practitioners within the local authority, their legal advisers and, in the case of legal challenges, the Courts. The consultation on the statutory guidance reflects the same ambition.

## **5.6 Risk Management**

- 5.6.1 The Care Act sets out a number of new statutory requirements and duties. Consultation on the draft guidance gives the Council the opportunity to ensure that the risks in meeting these new requirements are minimised.

## **5.7 Equalities and Diversity**

- 5.7.1 The consultation response will inform the Eligibility Impact Assessments to be carried out on the new policies, services and processes proposed for implementation as a result of the Care Act Implementation Project.

## **5.8 Consultation and Engagement**

- 5.8.1 The committee agreed on the 2 July 2014 to set up a working group for Members to advise officers on the Care Act.

## **6. BACKGROUND PAPERS**

- 6.1 Special Safeguarding Overview and Scrutiny Committee on 24 September 2012 received a report on the 3 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. [Adult Social Care and Health \(1.1\)](#)
- 6.2 Cabinet on 18 April 2013 received a report 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. [Social Care Funding Reform and the Draft Care and Support Bill: Implications for the London Borough of Barnet \(3.1\)](#)
- 6.3 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. [Social Care Funding Care and Support Bill Update \(1.1\)](#)

- 6.4** The Safeguarding Overview and Scrutiny Committee on the 10 April 2014 received a report setting out the main points from the forthcoming changes to social care legislation as set out in the Care Bill, the implications for Barnet and the approach being taken to prepare for the new requirements. [The Care Bill Update Report \(2.1\)](#)
- 6.5** The Adults and Safeguarding Committee received a report on the implementation of the Care Act on the 2 July 2014.
- 6.6** The draft regulations and guidance on the implementation of the Care Act can be found at <http://careandsupportregs.dh.gov.uk/>