

Department of Health: The Care Act 2014. Consultation on draft regulations and guidance for implementation of Part 1 of the Act in 2015/16

Response by the London Borough of Barnet

August 2014

Introduction

The London Borough of Barnet is pleased to have the opportunity to respond to the Department of Health's consultation on the draft regulations and guidance for implementation of Part 1 of the Act in 2015/16.

We have actively participated in developing the London ADASS response to the consultation. The Barnet response should be read alongside that document. Barnet is one of the largest London Boroughs with a high proportion of residents aged over 65. Barnet's population is set to increase significantly, with increases in people living with dementia and younger adults with complex disabilities. Barnet is also home to a large number of care providers, with 103 registered care and nursing homes in the borough. This response focuses on aspects of the regulations and guidance in respect to our local context and in the climate of financial austerity.

We welcome the degree to which the regulations and guidance enshrine existing good practice into the legal framework for social care. From a service user perspective, we welcome the move towards national consistency in quality, care safeguarding and personalisation. However, a key concern is that the new responsibilities are appropriately financially resourced in order that Barnet can meet its duties under the Act. Our current modelling suggests that notified new burdens funding for Barnet will not be sufficient to meet the true costs of delivering the reforms enshrined in the Care Act and the draft regulations and guidance.

The impact of the Act and regulations

- Barnet's modelling indicates that the 2015 legal changes will bring significantly increased volumes of assessments, which in turn will lead to increased support plans and reviews. Our research indicates that:
 - Up to 6,000 additional self-funders living in the community could come forward requesting a service user assessment, in addition to an average of 2,500 service user assessments.
 - Up to 9,620 additional people may come forward requesting a carer's assessment, in addition to an average of 2,000 carer assessments.
 - Up to 1,000 self-funders living in nursing and care homes who will request an assessment in advance of the capped costs system going live in 2016.

- Detailed analysis of the Barnet population indicates that Barnet residents are likely to be early adopters of the reforms, as they have key characteristics of liking to be well informed, concerned about health and wellbeing and aware of their rights. We therefore anticipate that the majority of the numbers listed above will come forward.
- We therefore have significant concerns regarding the costs to Barnet of carrying out the new and additional duties created by the Care Act, such as:
 - The additional costs of undertaking service users and carers' assessments with the additional packages of care required would be up to £4 million in 2015/16 and £16 million in 2016/17.
 - The capital amount of funding tied up in deferred payments, once the scheme is fully utilised, will fall between £3 million and £5.2 million (average estimate £4M) at any point in time.
 - There are as yet unknown financial implications to cover the provision of advocates and to pay family members for managing and/or providing administrative support of direct payments. There is no existing funding in place to cover these.
 - The increase in the cost of care to local authorities as a direct result of enabling self-funders to request that the local authority arranges their care at local authority rates. Providers are likely to raise their prices to local authorities to compensate for the loss of these people paying private market rates.
 - The substantial and unpredictable costs of meeting needs in the case of business failure. Due to the high number of care homes in the Borough, there is a higher likelihood of this happening in Barnet than almost any other London Borough.
- The Care Act carries significant implications for the workforce. The social care workforce in and around London is very mobile and people can easily commute to most London Boroughs. With the anticipated increase in demand for assessments for self-funders and carers, we are concerned that competition for staff will increase Councils' direct and indirect workforce costs.
- The wording of the draft regulations and guidance needs amendment in order to avoid the potential for high levels of costly legal challenges for Councils. A search in Word (the IT programme) shows 674 'must's and 1343 'should's in the guidance. Any of these which are not adhered to therefore create an opportunity for legal challenge. There should be absolute clarity about what is statutory guidance and what is best practice guidance re-drafting should take place to ensure that the statutory guidance only uses the words 'must' and 'should' when these relate to clear statutory requirements.

General responsibilities and universal services

1. Whilst the guidance generally provides us with the information we need to embed wellbeing, we are concerned about the cost of implementation and the impact on the whole social care workforce. There is no cost implication attached to the wellbeing principle in the Department of Health impact assessment. However, it is likely that there will be significant costs to Councils of meeting this principle and that Council's will face legal challenge on this principle, increasing risk further.
2. Identifying the different approaches to prevention is helpful although from an individual's perspective it might be seen as a continuum without necessarily a progression to higher levels. It is unclear where the example and case study provided in the guidance fit in terms of the levels described. In any case, they appear to be from later on in the prevention pathway. We would welcome examples of evidence-based interventions from earlier in the prevention pathway, that is to say primary and secondary prevention.
3. We see prevention as key to an individual's wellbeing. We also see it as an important mechanism for reducing demand for resources in an environment of increasing demand and financial austerity.
4. It appears that prevention and well-being as described in the guidance are seen as being driven, commissioned or provided by the local authority and as a result do not recognise the role and contribution of, for example, local support networks and the role of the local authority in developing community-based resources.
5. We anticipate that there will be some challenges in demonstrating the effectiveness of preventative services. We would welcome guidance on how this might be done.
6. The Barnet approach of using Later Life Planners for older people on the cusp of becoming eligible for state funded care is an example of good prevention and advice. Later Life Planners can be seen as a 'triage' service to assist in a healthy and active lifestyle for older people. When the person's needs become greater than they can manage themselves the Later Life Planner is then able to refer them to the necessary services.
7. The guidance places a duty on local authorities to ensure that information and advice services have due regard to people who do not have English as their first language. We feel that this places a disproportionate burden on London Boroughs because of the high diversity of spoken languages when compared with other local authorities. This guidance also appears to conflict with guidance from the DCLG which advises local authorities to stop translating documents into community or foreign languages to make savings and because translation undermines community cohesion by encouraging segregation. There should be consistency between the guidance from DH and DCLG and a clear message to local authorities, consistent with the Localism agenda.

First contact and identifying needs

8. We believe that the guidance on the national eligibility threshold needs to have greater detail to ensure that it is applied consistently.
9. Based on Barnet's participation in the recent ADASS/LSE survey on the new eligibility criteria, we feel that more people are likely be eligible under the new eligibility criteria than under the Council's current FACS threshold of critical and substantial. The professional opinion of social workers taking part in the study was that it could lead to an increase of 15%-20%, in turn leading to an increased pressure on our budgets.
10. In addition to more people meeting eligibility criteria, we believe that the number of people's eligible needs is likely to increase. For example, including cleaning and maintenance of the home as an essential care task is likely to greatly increase support for stand-alone domestic services. This will also lead to increased budgetary pressures. Barnet's understanding is that the new national threshold was intended to be equivalent of FACS substantial and critical, which indicates that the current draft eligibility thresholds need to be revisited in order to achieve this level. The alternative is that sufficient new burdens funding is given to Councils to meet this increased demand.
11. For the carers' eligibility criteria, we are concerned that there is no threshold in terms of the amount of care being given and that this will result in a significant number of people becoming eligible for support as carers. In addition, identifying child care as an essential task is likely to increase the need for additional child care services and demands on Council budgets. Again, this is an area that needs to be recognised in new burdens funding for Councils.
12. The list of tasks underpinning the national eligibility criteria is felt to be too prescriptive and that there should be a focus on outcomes which enable the tasks to be defined by individual circumstances.
13. We feel that greater clarity is needed on the status of advocates and their role and responsibilities. There also needs to be clarity on the relationship between the advocate, the nominated individual and the practitioner and how advocacy would work across health and social services. We would appreciate some guidance on what qualifications and experience a suitable advocate should possess.

Charging and financial assessment

14. The regulations and guidance are generally clear and offer the flexibility to decide locally whether to charge for preventative services or not. This flexibility is welcomed.
15. Whilst the option to charge carers has always been available to local authorities, this is not something that councils have routinely done and most, if not all, do not charge carers. This is different to the situation for service users. However, with the anticipated increase in demand for carers' assessments and support, it is likely that some councils will reconsider this position in the future in order to meet the financial challenge this creates, but this remains a flexibility. There is potential for a postcode lottery in terms of charging for carers, which is at odds with the spirit of the Act in terms of national consistency.
16. The Act requires local authorities, when requested, to arrange the care and support of those people with eligible needs whose financial resources are above the financial limit. Such care and support would be arranged through the authority's contracted providers. Because of the amount of care and support procured, we are able to purchase this at a discount. Many providers cross-subsidise their discounted prices with their full priced offerings sold on the open market. If sufficient self-funders choose to take advantage of local authority discounted rates, we predict that this will push providers to raise their discounted prices to compensate, thereby putting pressure on local authority budgets. They may also reduce their prices on the open market to encourage self-funders to purchase through that route.
17. The Regulations and Guidance state that interest charged under a DPA should not exceed the maximum amount specified in the regulations and that this would be between 3.5% and 5%. They do not specify how frequently interest can be compounded. We would like to have the ability to compound daily.
18. We feel that the Act misses an opportunity to strengthen the powers of local authorities in instances of fraud and financial mismanagement. We think that it is important that local authorities should still be able to use their HSSA powers and that any debts underwritten/carried by a local authority should be protected.

Person-centred care and support planning

19. We support the approach of people being in control of their own care and their active involvement in the support planning process. We support Personal Budgets for carers as this reinforces carers' rights and the support given to them in their caring roles.
20. We welcome the emphasis that the Draft guidance places on the use of approval panels acting in a timely manner that minimises bureaucracy. We also agree that approval panels should not operate for purely financial reasons. However, we think that the guidance should also emphasise the role that approval panels have to play in quality control, managing risks and ensuring consistency of provision and decision taking.
21. The proposed use of advocacy in support planning means that local authorities must ensure a good local supply of quality advocacy services. The success of efforts to this end cannot be guaranteed and there should be work at a national level to develop sufficient capacity in the system.
22. We think that there should be some national direction on calculating the indicative personal budget. Whilst we acknowledge there are variations between local authorities and that costs and prices vary, a consistent approach is needed if local authorities are to avoid disputes and legal action, especially in the light of the Act's emphasis on continuity and consistency of care across local authority boundaries.
23. We welcome the innovation of paying close family members to administrate/manage direct payments although this will have cost and monitoring implications that are currently unbudgeted for and which should be recognised in new burdens funding.

Adult safeguarding

24. We welcome the regulations and guidance on Adult Safeguarding and see them as enshrining good practice in law.
25. The Act and regulations place a range of duties on Councils. Safeguarding is also the responsibility of partners such as the NHS and the Police. There is a need to ensure that adult safeguarding requirements for partner agencies are also embedded in legislation, guidance and national performance arrangements.

Integration and partnership working

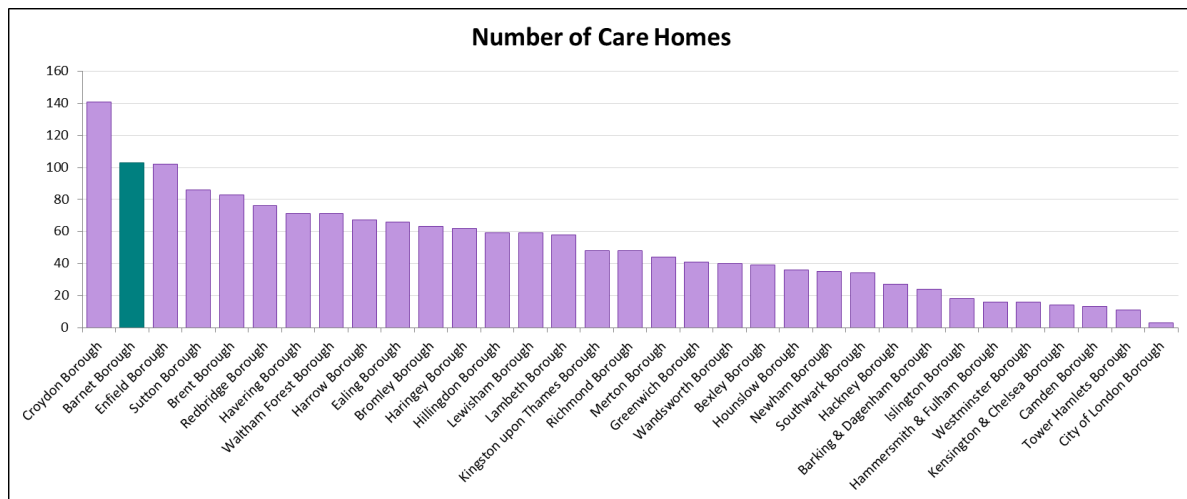
26. We feel that it is very helpful to have the guidance surrounding integration brought together in one chapter. The regulations and guidance make explicit what is generally regarded as best practice such as in transitions between adults and childrens services. However, there needs to be more clarity about how integration between health and social care should be achieved, with clear responsibilities on all partners.
27. We feel that there should be more in the guidance about joint commissioning as a key mechanism for achieving integration and co-operation and that there should be a direct reference to Section 75 of the National Health Service Act (2006) and its role in integration.
28. We welcome the duty of local authorities and the Department for Work and Pensions (i.e. JobCentre Plus) to cooperate. This was a successful component of the Right to Control pilots. We know from Barnet's experience that employment is a major contributor to the wellbeing of people with learning disabilities, physical disabilities or mental health issues. Their needs in accessing employment are very different from the general population and cannot best be met from the existing contracts JobCentrePlus has with the prime providers. Much greater operational flexibility is needed from partners and the guidance needs to be much clearer on the type of cooperation expected and the responsibilities that partners have to work with local authorities.
29. We recognise that there are some opportunities for implementation in London, for example, the Mayor's interest in mental health and employment, and that there could be a pan-London approach on some issues.

Moving between areas: inter-local authority and cross-border issues

30. We feel that the guidance and regulations about ordinary residence disputes provide clearer guidance than in the past and should reduce the numbers of disputes.
31. However, as one of the London Boroughs with the highest number of residential care homes within its boundaries, we feel that there should be specific guidance on the ordinary residence of self-funders who arrange residential accommodation in an area other than that in which they had previously been resident.

Annex A: Market oversight and business failure

32. We welcome the new duty of the local authority to meet needs in the case of business failure. The very threat of an interruption to care and support services can impact severely on the wellbeing of people using services. Nevertheless, Barnet has 103¹ residential and nursing homes, the second-highest in London, and the likelihood is high that the Council will have to exercise these functions and expend considerable resources when it is called upon to do so. We have recent experience of having to move all the packages of care from one home care provider to another. Approximately 200 people were affected and it cost us in excess of £100k in management, procurement, stand-by services and reviewing costs. We would suggest that the government considers providing funding to meet the costs of provider failure when it does occur.



¹ Source: <http://www.carehome.co.uk/>