
Meeting Special Safeguarding Overview and Scrutiny Committee

Date 24 September 2012

Subject Adult Social Care and Health – Caring for Our Future White Paper; Draft Care and Support Bill; and Funding Reform

Report of Cabinet Member for Adults

Summary This report describes the main points from the three key adult social care policy documents; Caring for Our Future the white paper; the draft Care and Support Bill; and the Government's interim statement on funding reform for Adult Social Care. All three documents were published in July 2012. The report sets out the implications for Barnet and outlines work required to manage the implementation of the new requirements arising from the White Paper and legislation.

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Status (public or exempt) Public

Wards Affected All

Key Decision No

Reason for urgency / exemption from call-in / N/A

Function of	N/A
Enclosures	N/A
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1. RECOMMENDATIONS

- 1.1 The Committee note the contents of the report and consider the impact of this new national policy framework on Barnet Council's Adult Social Care function.
- 1.2 The Committee endorse the establishment of a dedicated programme of work that will analyse the impact of the new framework and implement a series of actions to ensure that Barnet Council can meet its new responsibilities successfully
- 1.3 The Committee note the indicative resource implications arising from the new framework and note that further work is to be done to develop a detailed resource model and mitigation plan for consideration by the relevant decision making body.

2. RELEVANT PREVIOUS DECISIONS

- 2.1 None.

3. CORPORATE PRIORITIES AND POLICY CONSIDERATIONS

- 3.1 The draft Corporate Plan responsibility of 'Sharing Opportunities and Sharing Responsibilities'; accords with the underpinning principles set out in the White Paper. In addition the Corporate Plan contains the objectives of: safeguarding vulnerable children and adults; supporting residents to lead healthy and independent lives; and offering greater personalisation for users of social care services, a positive experience of care and support for carers. These themes are all in keeping with the direction of travel set out in the White Paper and 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 Care and Support bill.
- 3.2 The draft Health and Wellbeing Strategy 2012-15 sets out two themes of relevance to the new policy framework: Keeping well, Keeping independent. The White Paper agenda links directly with three of the main themes in the strategy: Wellbeing in the community; how we live; and Care when needed. In particular 'Care when needed' identifies plans for developing support 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 White Paper is positive for users and carers, an initial review of the White Paper 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 White Paper sets out that age discrimination in health and social care is to be unlawful from October 2012. 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.
- 5.2 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.
- 5.3 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.
- 5.4 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 The White Paper and draft Care and Support Bill set out a number of additional requirements for councils and has provided a high level impact assessment as to the resource required to meet them. However, it is currently unclear how the additional requirements will be funded at a national level and it is anticipated that more information will be issued by the DoH in the future. This report contains initial estimates of the impact for illustrative purposes. In modelling these estimates, this report has assumed that where a national assessment of the financial impact has been set out in the White Paper, the Barnet proportion of that is equivalent to 0.6%. This report recommends that a work programme to investigate and review the resource and other implications of the White Paper is established. When there is clarity about funding nationally and the local work programme is completed, detailed work to address the use of resources implications of the White Paper in the council's Financial and Business planning process will take place.
- 6.2 The White Paper proposes to offer extended rights of assessment and a right to services for carers. The Department of Health estimates the changes will cost councils on average £144m per year. The Council currently supports carers with a budget of £1m. Therefore based on the assumption above, implementing the White Paper requirements therefore could necessitate spending levels to be increased to £1.86m per annum.
- 6.3 The proposals also include the requirement to offer assessment, support planning and review to people who fund their own care. This is not a service we currently provide to self funders and it would involve additional resourcing costs in terms of social work time and capacity. The council currently spends approximately £10m on social work services and supports a relatively low number of people given the high proportion of self funders within Barnet (2.8% of the Barnet population, compared to London average of 3.4% and England average of 4.4%). Assuming an increase to the England average, for illustrative purposes, this could necessitate an increase in social work spend of approximately £5m per annum.
- 6.4 The White Paper proposes that there will be a national minimum eligibility threshold for case assessments from 2015 with an estimated annual cost of £18m. The Barnet Council threshold for eligibility under the national Fair Access to Care Services eligibility criteria is set as being at critical or substantial in line with over 85% of councils. A reasonable assumption is that the impact of this change for Barnet will be £108k per annum.
- 6.5 The government's response to funding reform sets out a requirement for council's to offer deferred payments for social care on a universal basis from 2015. Under this scheme, the council would fund the service user's social care costs, which would then be re-paid to the council after the demise of the user, from their estate. Barnet does not currently offer this to local residents, having not implemented a deferred payments scheme. Whilst the details of the proposed scheme are still to be published there may be financial and resource implications from running such a scheme, including an additional pressure on the existing financial assessment team and treasury management implications. The impact of this has not been quantified. However it is

anticipated by central government that Local Authorities will be funded for this new responsibility and in the long term this scheme will become self funding.

- 6.6 The White Paper states there will be an additional £300M funding for social care to local authorities via national NHS commissioning board for integrated care in 2013/14 and 2014/15. For Barnet, this can be assumed at a level of £1.8m over two years. However it is unclear as to whether this will be recurrent funding. Despite this being welcome given the financial implications of the White Paper, Adult Social Care continues to experience high levels of demand pressures arising from demographic pressures. Given this context, Adult Social Care and Health is working to manage demand and cost and it will be important that it continues to do so. Nationally the King's Fund has calculated that a funding gap of £1.2bn could open up between 2011-15 due to the government's 28% real term cuts to council budgets reflecting Barnet Council's own analysis of the financial implications of growing needs for children and adults care. The additional responsibilities that the White Paper will confer and the funding levels required have been based on current budgets and not reduced future budgets. It will be important that this level of financial risk for the Council is quantified through the Finance and Business Planning process at the appropriate time.

7. LEGAL ISSUES

- 7.1 The current social care legislation has evolved over a number of decades and in a piecemeal manner. The current legislation is complex and sometimes confusing and the Courts have commented on these difficulties in several cases. As with the Equality Act 2010, the draft Care and Support 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.

8. CONSTITUTIONAL POWERS

- 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 responsibility:
- 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 In July 2012, the government published the following key documents:

- *Caring for Our Future: Reforming Care and Support (White Paper)*
- *The draft Care and Support Bill*
- *Caring for Our Future: progress report on funding reform*

9.2 The White Paper, *Caring for our Future*, describes a vision of a new role for local authority adult social care. In the new system, the local authority becomes a system leader as opposed to a provider of care management and service provision reflecting the direction of the council. Councils are expected to concentrate on needs assessment, supporting social capital, promoting Direct Payments, information and advice and market development. The Care and Support Bill is in pre-legislative scrutiny and will be introduced to Parliament in 2013

9.3 The strategic and business plans of Adult Social Care and Health are in line with many of the White Paper themes. The Directorate is already working on promoting and increasing direct payments, enhancing support to carers, new on-line information, support, and building social capital through schemes like the Supporting Independence Fund.

9.4 The plans for the new Adults and Communities Delivery Unit include an increased focus on prevention and information and advice. The focus on commissioning and system leadership for local authorities has strong synergy with the vision of the Commissioning Council. However the proposals carry significant potential resource implications, especially in the areas of the deferred payments scheme, support for carers and additional services for self-funders. Further work is required to understand the full impact of these proposals through a dedicated programme of work.

9.5 **The Key themes of the White Paper: Promotion of social capital and prevention**

This includes Central and Local Government promotion of a range of initiatives to help reduce the need for formal care. It is proposed that there is the setting up of a national health and social care volunteering fund, national pilots of social impact bonds and promotion of time banks enabling people to find ways of giving of their time whilst they are able in exchange for care when needed. The White Paper also proposes establishing a £200M housing fund which is to be used to develop extra care schemes for older people, and a stated aim of increasing the use of telecare in social care. Details of how to access the £200M housing fund have yet to be published.

9.6 **Better information and advice**

The Department of Health has established a national website with social care provider profiles which will be added to over time. It also wants to establish national comparison and feedback sites for social care services. The White Paper requires local authorities to provide on line information about local services and how to access them. To assist councils to develop on line information, start up funding of £32.5M will be made available. Details of how to access this have yet to be published.

9.7 **Dignity, standards and workforce**

There will be a new code of conduct and minimum training standards for care workers. The government will appoint a national chief social worker and recommends principal social workers in local adult social care. Work will start to develop a national evidence base led by The National Institute for Clinical Excellence and a new system of national care audits will be implemented. There are measures to improve the quality of personal assistants and registered managers and to increase entrants to social care as a career.

9.8 **New entitlements for service users and carers**

The Care and Support Bill draws together existing social care law into a single statute and replaces outdated legal aspects. Both the draft Care and Support Bill and White Paper set out a range of new entitlements.

9.8.1 The right to a personal budget and direct payments will be enshrined in law for the first time. (It should be noted that Barnet residents already have this legal right through the 'Right to Control')

9.8.2 Social care eligibility thresholds will be set nationally from April 2015, removing local authority discretion to set their own Fair Access to Care thresholds. At the moment, the vast majority of councils set their threshold at Substantial and Critical (from the four levels of Low, Moderate, Substantial and Critical). It is likely that the effect of this will be to prevent councils from moving thresholds to Critical only).

9.8.3 Users will have a right to continuity of care after a move to a new area and care cannot be stopped pending a new assessment by the new host authority. Councils can still conduct their own assessment but will need to put in writing the reasons for a different outcome to the user. This will mean that councils may pay for care longer after a user has moved; or that the receiving council has to take up the cost of care earlier than is the case in the current system. The aim of this change is to prevent disruption of care for users and should reduce debate between councils about residence requirements and care entitlements.

9.8.4 The documents set out significant changes to Carers' entitlements. They are to receive extended assessment rights and for the first time, a legal entitlement to support services and review. The entitlement in law to support is new and could have significant financial implications in terms of meeting these needs. However, it is possible that it could in some cases lead to reduced costs in direct care, as carers should in theory be more supported to carry on their caring role. The impact of this new entitlement is significant. In 2011/12, the council carried out 2424 carers' assessments but did not provide services to all of them. In addition, the new entitlements are likely to encourage more carers to come forward for support. Detailed modelling of the potential impact will be carried out.

9.8.5 Carers' needs are to be considered as equal to the needs of the service user. For the first time, a national eligibility threshold for carers will be set. The thresholds are not yet known.

9.8.6 Councils will be required to offer assessment, support planning and care management to people who fund their own care (self-funders). Under current

legislation anyone can request a community care assessment but not support planning and care management. The extent to which this service will be requested by self-funders is unknown but will have resource implications in terms of capacity required to provide this service.

9.9 New requirements on local authorities

In addition to the requirements described above, there will be the following new requirements on local authorities:

9.9.1 There will be a legal duty to commission and provide preventative services and information and advice, although the level and nature of these services is not prescribed. This will have implications for many councils who have reduced or cut these type of services as part of their response to the Comprehensive Spending Review funding reductions

9.9.2 There will be a duty in law for the first time to inform users about rights to direct payments (DPs) and what needs could be met by DPs. This, like the new right to a personal budget, is in effect an update of the legal framework to reflect current best practice.

9.9.3 There will be a duty to open up council community buildings for local use, as part of the DoH drive to promote social capital and prevention. This has synergy with work already being carried out by the council to map community assets.

9.9.4 Local authorities will be required to take on the leadership role in situations of social care provider failure, such as the recent situation with Southern Cross. More details of this will be published and council duties will be set out in legislation

9.9.5 Commissioning home care “by the minute” is to be banned.

9.9.6 There will be a duty to ensure that adult social care and housing work together effectively in the area of adaptations and home repairs.

9.9.7 There will be a duty to promote diversity and quality in care and support provision.

9.9.8 There will be a duty to promote the integration of services.

9.10 Safeguarding

The draft Care and Support Bill sets out a continued leadership role for councils in adult safeguarding. Adult Safeguarding Boards will become statutory bodies, in the same way as Children’s boards, with a defined core membership of the Council, NHS and Police. The council will be required to publish an annual strategic plan which is a new requirement, and an annual report, which it already does. The council will have a legal duty to make safeguarding enquiries or ask others to do so. Previously, the council role in adult safeguarding was set out in statutory guidance as opposed to primary legislation. This change strengthens the role of the council in adult safeguarding and gives councils a clearer footing on which to work.

9.10.1 The government is also consulting on a new power of entry for social workers to make safeguarding enquiries. This would apply only in a very limited

number of situations where there is evidence that access to the adult at risk to make those enquiries is being prevented by a suspected abuser.

9.11 **Funding reform**

The government has accepted the two principles of the Dilnot Commission report on social care funding. These are firstly to introduce a cap on lifetime care costs, which Dilnot had set at £35,000. Secondly to raise the threshold at which people lose means tested support, which is currently set at £23,200. However the progress report makes *no commitment to introduce these*. The decisions about whether this is affordable and when it should be introduced will be made at the next spending review.

9.11.1 The level of a cap has not been defined. However, it would cover council 'benchmark' care costs and users would be expected to pay top ups if they chose more expensive services. User would still be required to pay hotel costs in residential care ('board and lodging'). Similarly, the threshold for loss of means tested support has not been set out.

9.12 **Deferred payments**

However, the government has announced that it plans to legislate to introduce a national system for deferred payments for residential care from April 2015. Deferred payments mean that users or their partners do not need to sell their home in their lifetime to pay for care. The local authority will be required to fund the costs of the care and will be refunded from the estate of the service user. Details of how the scheme will work have not been published. The DoH plans to work with the care sector in 2013/14 to finalise the scheme.

9.12.1 The progress report on funding reform sets out a government commitment to fund local authorities for this new requirement but does not describe how this will be done. It is understood that councils will be able to levy charges or interest to cover the costs of the scheme.

9.12.2 Whilst some local authorities already offer deferred payments to some extent, Barnet does not. Detailed work is required to model the impact of the scheme and prepare for implementation in 2015. Barnet has a large number of owner occupiers among its older population and this scheme will potentially be attractive to significant numbers of residents.

10. **LIST OF BACKGROUND PAPERS**

10.1 Caring for our future: reforming care and support (White Paper)
<http://www.dh.gov.uk/health/2012/07/careandsupportwhitepaper/>

10.2 Draft Care and Reform Bill
<http://www.dh.gov.uk/health/2012/07/care-and-support-bill-comment-online/>

10.3 Caring for our future: progress report on funding reform
<http://www.dh.gov.uk/health/2012/07/scfunding/>

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