
Meeting	Health and Well-Being Board
Date	21 November 2013
Subject	Care Bill update report
Report of	Adults and Communities Director
Summary of item and decision being sought	The Care Bill currently undergoing scrutiny in the House of Lords, is expected to pass into statute in spring 2014. This report provides an update to the report to the Health and Well-Being Board on the 27 June which outlines the potential impact of the reforms on Barnet. This report provides an update on changes to the proposed Care Bill and the progress made to date by the Local Authority in preparation for the Care Act.

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Reason for Report	To note the update on the Care Bill and the progress made to date.
Partnership flexibility being exercised	None
Wards Affected	All
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1. RECOMMENDATIONS

- 1.1 **That the Health and Well-Being Board (HWBB) notes the Care Bill update.**
- 1.2 **That the HWBB notes the progress made locally to prepare for the implementation of the new legislation.**

2. RELEVANT PREVIOUS DISCUSSIONS AND WHERE HELD

- 2.1 The Care Bill implications report to Cabinet on the 18 April 2013 and to the HWBB on the 27 June summarised the implications of the Care Bill.

3. LINK AND IMPLICATIONS FOR STRATEGIC PARTNERSHIP-WIDE GOALS (SUSTAINABLE COMMUNITY STRATEGY; HEALTH AND WELL-BEING STRATEGY STRATEGY; COMMISSIONING STRATEGIES)

- 3.1 The reforms align with the objectives in Barnet Council's 2013/14 Corporate Plan - "supporting 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".
- 3.2 The Health and Well-Being Strategy also echoes many themes of the new policy framework with its emphasis on promoting independence and wellbeing whilst ensuring care is provided when needed.

4 NEEDS ASSESSMENT AND EQUALITIES IMPLICATIONS

- 4.1 The White Paper, Caring for Our Future: reforming care and support; which preceded the Care Bill stated that age discrimination in the provision of health and social care services became unlawful from October 2012. This places duties on service providers as well as public bodies. 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 and offers services to users within this framework. Relevant positive action is undertaken 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. Monitoring of access to assessments and personal budgets against protected characteristics is now taking place.
- 4.2 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.
- 4.3 The Council, as a public body, must also comply with the public sector equality duty, which requires it to have due regard to the need to eliminate discrimination, harassment and victimisation, advance equality of opportunity and foster good relations between different protected groups and those who do not form part of a protected group. This applies across all protected groups, including age, gender, disability, race and religion. There have been a number of high profile legal challenges based on breach of the

equality legislation: for example, the 2011 challenge to Birmingham City Council on its proposed change to adult social care eligibility criteria.

- 4.4 In order to ensure Barnet Council remains compliant with this legislation, it will be necessary to assess the equality implications of new policies and strategies to identify any disproportionate impact on a particular group and consider mitigating measures to address any negative impact. This should help ensure that in specific services and universal services there is a transparent and fair approach to social care users regardless of their protected group.

5. RISK MANAGEMENT

- 5.1 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.
- 5.2 These changes need to be considered in the context of key financial and demand risk factors already known concerning social care. These are demographic growth, particularly among older people and younger adults with complex disabilities; and increasing complexity of need among adult social care service users. Additional new risks include the new duties to provide services to carers and to people who fund their own care.
- 5.3 The Council is already addressing identified risk demand factors though the development of strategies, some of which are likely to be statutory responsibilities in the future. These include close working with public health to deliver a strong focus on prevention and early intervention, such as improved information and advice, increased use of telecare and enablement; joint working between Barnet Homes and Adult Social Care to develop housing which supports independent living and the development of integrated services between the NHS and social care.
- 5.4 However, even with an increased focus on demand management, the combined impact of demographic change and the new policy and statutory requirements present a significant challenge that will require a sustained and robust Council wide response with continued engagement with key partners. This will need to involve developing suitable accommodation that ensures people remain independent; supporting carers to continue caring; encouraging people to plan in advance for their care needs; and promoting well-being and independence and community inclusion. Only such a strategic approach can mitigate the demand and financial pressures that will continue to be faced by Adult Social Care.

6. LEGAL POWERS AND IMPLICATIONS

- 6.1 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.
- 6.2 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.

- 6.3 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, which is the subject of a separate report to this Board.
- 6.4 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.
- 6.5 Part 3 deals with Health and sets up two new non departmental health bodies. Part 4 deals with technical matters to ensure proper operation of the legislation.
- 6.6 The Bill has now completed its House of Lords stage and was presented to the House of Commons on 30 October 2013.

7. USE OF RESOURCES IMPLICATIONS - FINANCE, STAFFING, IT ETC

- 7.1 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 by, say, 25% this will result in a significant shortfall for the authority. 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.
- 7.2 London Councils' analysis estimates 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. Based on this, it is assumed that funding is likely to be made available to Local Authorities to meet the additional costs of implementing these reforms. However, no detailed announcements have been made about this and further details will be shared when known.

8. COMMUNICATION AND ENGAGEMENT WITH USERS AND STAKEHOLDERS

- 8.1 There will be a legal duty to commission and provide preventative services and information and advice. Barnet Adult Social Care currently provides a range of information and advice services: Social Care Connect (an on-line directory); a wide range of information leaflets; internet information; specially commissioned information, advice and advocacy services; 'My Care My Home', a dedicated service for people funding their own care including access to independent financial advice; "Care Place", a web based tool giving information on care provision across Barnet and other boroughs in

the West London Alliance. Healthwatch will have a key role to play in supporting and signposting local residents who may wish to access local health and social care services as one of its key functions is information provision.

9. ENGAGEMENT AND INVOLVEMENT WITH PROVIDERS

9.1 Local Authorities will be required to take on the leadership role in situations of social care provider failure. More details of this will be published and Council duties will be set out in legislation.

9.2 The following duties will be set out for Local Authorities that will require them to work with providers:

- Ensuring that adult social care and housing work together effectively in the area of adaptations and home repairs;
- Promoting diversity and quality in care and support provision. Through the Council's adult social care Market Position statement we are engaging with the provider market to ensure that we plan services for our diverse populations;
- Promoting the integration of services: the Council and the NHS have established integrated care for mental health and learning disabilities, and integrated commissioning, including for community equipment and the voluntary sector. The Council and CCG have established a formal health and social care integration programme, reporting to the Health and Well-Being Board. The CCG and adult social care are running pilot integration projects for older people and are developing an overarching model for integration for this group.

10. DETAILS

10.1 Care Bill Update

Since the report in June to the Board, the Care Bill (first published in July 2012) has undergone a number of amendments. (The latest version of the Bill can be found here <http://bit.ly/18a1YQi>.) It is worth noting the following:

- The level of the cap for adults of working age is still to be set, whilst the cap for older people remains at £72,000 and at zero for those who turn 18 with eligible needs.
- The level of the means test threshold has been amended since the publication of the funding reform statement in February this year. The latest position from the Department of Health is as follows. The means test threshold 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. community based care) will be £27,000, an increase of £4,000 above the current thresholds
- The national deferred payment scheme requirement now appears to cover the costs of residential care only and only people with capital of less than £23,250 will be eligible for the national scheme.

10.2 Consultation

The Department of Health has consulted on various aspects of the Bill, including developing new standards for adult social care, the new safeguarding duty and

implementing funding reform. The latest consultation ended in October 2013. Specific topics covered in the consultation include:

- How social care can further support people to make better informed choices through improved information and advice and how the government can increase help given to Local Authorities to meet such demands.
- How the capped cost system should work with assessments, personal budgets, charging, and care and support planning
- The design of the new charging framework for care and support and the choices around how the capped cost system should work for working age adults.
- How deferred payment agreements should be managed and administered.

Our response to the consultation can be found within Appendix A and this covers the main areas of change proposed. We look forward to seeing the outcome of the consultation and seek continued involvement in developing and shaping these proposals.

10.3 Care Bill Financial Impact

It has been announced by government that £335 million will be available in 2015/16 to assist Councils nationally in preparing for the Care Bill reforms, although local allocations are not yet known. £2 billion of national funding has also been announced for the first two years of the social care funding reforms from 2016 to 2018.

London Councils published their analysis of the potential financial implications for London Boroughs in July this year. This analysis indicates that the current funding commitment made by government to meet the additional burdens arising from the Bill will be insufficient to cover the actual costs London boroughs will incur. It also showed that people living in London will reach the care cap earlier than in other parts of the country, creating an additional pressure on London boroughs (report link: <http://bit.ly/1a7ubwm>).

At a local level, the Council are continuing to assess the financial impacts of the Bill. LBB are one of a handful of pilot boroughs that will be testing a tool to model the financial impacts of the cap on care at a local level. The tool has developed a model for illustrating the impact of the financial elements relating to the proposed changes to capital threshold and introduction of a cap on lifetime cost of care, especially in relation to those who fund their own care. Output from this exercise is expected to be completed by the end of November where the tool will then be rolled out nationally to all Local Authorities to use. The results of this analysis will inform the detail of Barnet's Care Bill work programme.

10.4 Current Progress

Following the initial mapping of the potential impact of the reforms, presented in June, Adults and Communities have carried out a gap analysis of the Council's current status against the Bill's requirements and of 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 with an inaugural officer programme board meeting in November. The initial programme board is made up of key representatives from Adults & Communities, Joint Commissioning, Finance and the CCG and will be expanded to include other partners in due course.

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 and wellbeing, 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 our existing internal IT replacement programme are also underway and have been identified as part of our initial mobilisation. Our initial analysis of these and other projects will ensure that any key project dependencies are identified and aligned as early as possible.

The overall draft programme is described in the table below

Workstream	1 Cabinet Member Working Group
Aim	Consider overall direction of care bill, policy and corporate planning issues, develop policy and take through decision making processes.
Key tasks	<ul style="list-style-type: none"> • Set aims and terms of reference • Agree membership with Cllr Rajput • Set meeting dates (4-6 meetings altogether) • Prepare for meetings • Agree end products with Cllr Rajput • Reports produced • Meeting themes: analysis/ demand modeling, policy development, review of specific aspects: e.g. deferred payments, prevention, carers.
Workstream	2 Demand analysis and modelling
Aim	Ensure LBB is prepared for impact of care funding and care and support reforms in 2015 and 2016.
Key tasks	<ul style="list-style-type: none"> • Refine April modeling based on funding reform announcements. • LGA etc. analysis, to ensure LBB is prepared for implementation issues, impact. • Take forward policy recommendations and reports as required.
Workstream	3 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	4 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	5 Revision of fairer contributions policy
Aim	To implement the new national contribution policy for funding reform from 1.4.2016.
Workstream	6 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 whilst promoting independence and managing demand.
Workstream	7 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	8 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.
Key tasks	Consideration of specific issues relating to these groups, identification of action required.
Workstream	9 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.

Key tasks	To be determined but will consider the following: <ul style="list-style-type: none"> • Partnership delivery with CAB • Local VS and private sector providers • National OP organisations • Local groups like BOPA
Workstream	10 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.
Key tasks	To be determined but will consider the following: <ul style="list-style-type: none"> • Partnership delivery with CAB • Local VS and private sector providers • National OP organisations • Local groups like BOPA

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 etc will increase and at what pace and 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 workstream will underpin several other workstreams in the programme.
- **Deferred payments:** Although the Council has deferred payments in operation, the scheme will need significant further development to meet national requirements. This workstream is being initiated early because of the financial implications of large scale take up of deferred payments and the complexity of establishing the scheme.
- **IT and infrastructure requirements:** New IT systems within Adults and Communities are in the business case development stage and given the lead in time for IT changes, work on Care Act requirements need to be factored in at the early stages.
- **Carers and prevention:** Under the new legislation, carer's entitlements are significantly enhanced and prevention becomes a statutory function; therefore this is being taken forward as a priority.

Whilst the other work streams are important, publication of further guidance and information is required before work in these areas can be usefully initiated.

11 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>
- 11.2 London Councils Care and Support Funding Reform Cost implications for London
<http://bit.ly/1a7ubwm>
- 11.3 Care Bill latest progress <http://services.parliament.uk/bills/2013-14/care.html>
- 11.4 Caring for our future: progress report on funding reform
<http://www.dh.gov.uk/health/2012/07/scfunding/>

Legal – SW
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