

	<h2>Adults & Safeguarding Committee</h2> <h3>8 June 2015</h3>
Title	Care Act 2014: Implementation of Phase 1 and preparation for Phase 2 funding reforms
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Wards	All
Status	Public
Enclosures	Appendix 1 – Cap and Care Account Case Studies Appendix 2 – Income and Capital Appendix 3 – Deferred Payments Case Studies Appendix 4 – Barnet’s response to the Department of Health (DH) consultation on the draft regulations and guidance Appendix 5 – Barnet’s response to the DH consultation on the funding formulae for implementation of the Care Act in 2015/16
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Summary

This report provides the committee with an update on the implementation of Phase 1 of the Care Act and a briefing on progress being made towards meeting the second wave of statutory requirements of the Care Act due to come into force on 1 April 2016. The report also seeks to inform members of the policy decisions that will be required.

Recommendations

1. That the Committee agree to the proposed approach for the implementation of the second wave of Care Act reforms.
2. That the Committee agree to the proposed timetable for sign-off of essential policy changes as contained within this paper.

1. WHY THIS REPORT IS NEEDED

- 1.1 The Council has now implemented the Phase 1 reforms for April 2015 required under the Care Act 2014 and is now working to implement the Phase 2 reforms required for April 2016.
- 1.2 A cap will be introduced on the costs that people have to pay to meet their eligible needs. The Draft Regulations and Guidance proposed that the cap will be set at £72,000 in April 2016 for people over the age of 25 and anyone who develops eligible needs before they turn 25 will benefit from a 'zero cap'. Note that the amount of the cap has not yet been finalised so changes are still possible following the Department of Health's public consultation.
- 1.3 The amount that counts towards the cap will probably be what it would cost the local authority to meet the person's eligible needs and not what an individual is actually paying for their care. The reasoning is that this gives fairness in the way in which people with different means progress towards the cap. This will entail them having their care and support needs assessed to determine which are eligible and then a calculation made of their Independent Personal Budget.
- 1.4 When someone reaches the cap the local authority will pay a contribution towards the person's care fees to cover the cost of care to meet their needs. To illustrate how people might progress towards the cap, case studies taken directly from the Department of Health's Draft Guidance are presented in Appendix 1. The Local Authority rates used are those used in those examples and are not necessarily similar to the rate that Barnet will apply.
- 1.5 A 'care account' will give all people with eligible social care needs who sign up an annual statement of their progress towards reaching the £72,000 cap, whether their care is organised by the local authority or not.
- 1.6 A standard contribution to general living costs of £230 per week (around £12,000 a year) will be set for people in residential and nursing care. People in care homes will remain responsible for their living costs when they reach the cap if they can afford to pay them. This will not count towards the cap.
- 1.7 As well as introducing the cap on care costs, the Act also extends means tested support so that more people will benefit from financial support while they are progressing towards the cap.
- 1.8 Local authorities already provide means tested financial help to pay for care and support where a person cannot afford the cost themselves. The financial assessment takes into account what a person can afford from both their income and their assets, for example savings or property.
- 1.9 A summary of what constitutes income and capital and how they are treated in the financial assessment is presented in Appendix 2. Note that this is a summary of the relevant section of the Care and Support Statutory Guidance and more detail is presented there and in the regulations.

- 1.10 Under current rules, if a person has less than £23,250 in assets they will receive means tested help – and they will contribute only what they can afford from their income (not their savings) if their assets are below £14,250.

Current	Care Setting	
	All	
Upper capital limit	£23,250 People pay full cost	
Between the upper and lower limit	<p style="text-align: center;">↑</p> <p style="text-align: center;">People pay what they can afford from income plus a means tested contribution from assets</p> <p style="text-align: center;">↓</p>	
Lower capital limit	£14,250 People pay what they can afford from income	

- 1.11 Under the new system, people in a care home with less than £118,000 in assets will qualify for means tested local authority help with their care costs - and they will contribute only what they can afford from their income (not their savings) if their assets are below £17,000. The same means test will also apply after people reach the cap to determine what proportion of £230 per week (around £12,000 a year) they can afford to contribute towards their daily living costs.

From 1 April 2016	Care Setting		
	Care Home		Other
Upper capital limits (people pay full cost)	£118,000 Where a property disregard does not apply	£27,000 Where a property disregard applies	£27,000
Between the upper and lower limits	<p style="text-align: center;">↑</p> <p style="text-align: center;">People pay what they can afford from income plus a means tested contribution from assets</p> <p style="text-align: center;">↓</p>	<p style="text-align: center;">↑</p> <p style="text-align: center;">People pay what they can afford from income plus a means tested contribution from assets</p> <p style="text-align: center;">↓</p>	<p style="text-align: center;">↑</p> <p style="text-align: center;">People pay what they can afford from income plus a means tested contribution from assets</p> <p style="text-align: center;">↓</p>
Lower capital limit (People pay what they can afford from income)	£17,000		

- 1.12 Because the means tested contributions from the local authority will count towards the cap people receiving means tested support will pay less than

£72,000 of their own money before they hit the cap, with the local authority making up the difference.

- 1.13 The Department of Health has set out proposals for a new appeals system. The proposals are at an earlier stage of development as they were introduced to the Care Act as a result of debates as it passed through Parliament. They are currently seeking views of stakeholders on the need for a new system.
- 1.14 The new appeals system would sit alongside the current means of redress. This includes the complaints system and the option of going to the Local Government Ombudsman. The current proposal is to introduce a new appeals system to:
 - Save time and money for the individual and LA compared to legal means of redress to disputes in adult care and support
 - Encourage non-adversarial alternatives to legal dispute resolution
 - Avoid potential cost accumulation
 - Encourage early resolution.
- 1.15 This paper identifies the major policies needing decisions by the Adults & Safeguarding Committee to implement the cap, extensions to means tested support and a new appeals system. All three are currently scheduled for implementation in 2016. There may also be other policy decisions which cannot be determined until final guidance is issued and analysed.

2. REASONS FOR RECOMMENDATIONS

2.1 Update on the implementation of Phase 1 (April 2015)

- 2.1.1 On 1 April 2015, the Care Act introduced a number of reforms that changed the way social care support and services are delivered in Barnet and across England.
- 2.1.2 A national and local campaign about the changes from April 2015 ran throughout January, February and March to raise awareness among relevant members of the public about the new reforms. This ceased in April because of the requirements of purdah.
- 2.1.3 A significant training programme has taken place in the Delivery Unit and with external partners. This has been delivered through a mix of classroom sessions and online training enabling approaches to be tailored for different roles.
- 2.1.4 From 1 April 2015, Barnet met the new duty to have in place a range of 'prevention' services, facilities and resources to prevent, reduce and delay people's need for care and support. A local approach has been implemented in line with the Council's new Information, Advice and Advocacy Policy. This ensures that the provision of information and advice takes into account individual circumstances and needs. It includes printed information, one to one advice (in person and over the phone) and on-line services.
- 2.1.5 From 1 April 2015, carers have new rights which mean that they may be able to get more help so that they can carry on caring and look after their own wellbeing. The services available to carers have been reviewed and revised.
- 2.1.6 From 1 April 2015, a national level of care and support needs has been introduced that all councils have to consider when assessing what help is given to adults in need and carers. The Council has agreed new assessment and eligibility policies, effective from 1 April 2015 and the new criteria is being applied when people are assessed or reviewed.
- 2.1.7 From 1 April 2015, people with eligible community care needs and savings above the upper savings and capital limit can ask the Council to arrange their care for them. This will help people who are unable to or do not want to identify and contact providers to arrange their own care and support. Processes are in place to enable people to use this new service.
- 2.1.8 From 1 April 2015, Barnet's new Deferred Payment Scheme became available. This follows national guidance set by the Department of Health and means that people should not have to sell their homes to pay for care, as they have sometimes had to do in the past. A deferred payment agreement is an arrangement with the council that will enable some people to use the value of their homes to pay for their care. If someone is eligible, we will help to pay the care home bills on their behalf. Payments can be delayed until the person chooses to sell their home, or until after their death. Since April several

residents have made enquiries about setting up a scheme. To illustrate how a deferred payment would work for an individual, case studies taken directly from the Department of Health's Care and Support Statutory Guidance are presented in Appendix 3. The Local Authority rates used are those used in those examples and are not necessarily similar to the rates that Barnet applies.

- 2.1.9 The Council's new Provider Failure Policy describes how Barnet will meet the new temporary duty to meet the care and support needs of people should a registered care provider be unable to carry on because of a business failure. Key staff have been trained and a robust continuity plan is being tested.
- 2.1.10 To meet the forecasted increase in demand, the Delivery Unit and Social Care Direct worked together to broaden the range of functions provided at the first point of contact in order to handle a larger numbers of enquires and resolve them straight away. The changes to enable this took effect on 1 April 2015.
- 2.1.11 In addition, workforce capacity was reviewed and it was determined that the most appropriate and efficient way to meet the expected increased demand would be to recruit agency staff on a temporary and fixed term basis in line with the expected peaks in demand. In mid-May there were 3 qualified agency staff in place to meet back office demand pressures from the Care Act and one non-qualified agency staff member to meet the front door demand pressures resulting from the Care Act. Recruitment of agency staff to meet the ongoing increase demand is in progress and the Delivery Unit are currently managing all demand including Care Act related pressures.
- 2.1.12 Whilst there has been an increase in Care Act related calls to Social Care Direct, this has not yet translated into an increase in demand for carer's assessments.

2.2 Progress towards implementing Phase 2 (April 2016)

- 2.2.1 The Department of Health's consultation on the draft regulations and guidance to implement the cap on care costs and policy proposals for a new appeals system for care and support closed on 30 March 2015. Barnet's response to the consultation is attached as Appendix 4. The Department of Health intends to publish the final regulations and guidance in October 2015 and lay them before Parliament at the same time.
- 2.2.2 The Department of Health's consultation on the funding formulae for implementation of the Care Act in 2015/16 closed on 9th October 2014. Barnet's response to the consultation is attached as Appendix 5. Amongst other things, the consultation sought views on the Cap (on care costs) Additional Assessment Relative Needs Formula which covers additional assessments for the cap (plus capacity building and local awareness) and will be paid as a Department for Communities and Local Government revenue grant.

2.2.3 The Department of Health published its response to the consultation on the funding formulae in December 2014 and has chosen to adopt the epidemiology approach rather than the extrapolation approach for the following reasons.

- It is a more direct measure of the number of self-funders on each local authority, which will be the primary driver of the cost of early assessments.
- It is therefore more closely related to the costs that local authorities will face.
- The removal of local policy and practice remains an important principle for the main Relative Needs Formula.

On this basis Barnet has been allocated £998,517 as its early assessment revenue grant for 2015/16. Note that funding for subsequent years has not been announced or confirmed.

2.2.4 Implementing the Cap requires that everybody who pays for or contributes towards their care should be offered a Care Account. This means that a potentially large number of people who are not currently in contact with the Council will need to have their care and support needs assessed to determine which are eligible and their Independent Personal Budget calculated. From Barnet's February 2015 modelling, the estimates for numbers of self-funders are:

- 754 self-funders in residential and nursing care
- 7,437 older people who pay for care in their own home.

One of the early activities of the Project will be to develop a strategy to proactively contact and offer an assessment to those people who are most likely to be spending enough to reach the cap in their lifetime. Assessments can start as early as October 2015 but no earlier to reduce the likelihood of a review being needed.

2.2.5 The Project is delivering the reforms through a Cap, Care Account and Contributions Workstream and an Appeals System Workstream. Project plans are now in place for these. These workstreams will be augmented by other workstreams delivering modelling and tracking, communications and engagement, workforce development and staff procedures.

2.2.6 DH, LGA and Association of Directors of Adult Social Services are undertaking the fourth of a series of Care Act stocktakes to inform the LGA's understanding of council's concerns. This survey builds on previous stocktakes, which clearly highlighted IT, workforce, funding and communications as key areas requiring further work. In response to this a number of tools and support materials have been developed by the National Care Act Programme team, with further support also in development.

2.3 Policies and Key Decisions

2.3.1 The policy and key decisions identified as needing consideration by the Committee are detailed below together with the meeting dates proposed for the forward plan. These decisions have been developed jointly by the statutory director, delivery director and the Council's legal team, HBPL.

Report Title	Brief Description
Adults and Safeguarding Committee – March 2016	
Implementing the Care Act: Adult Social Care and Support Contributions Policy	FORMAL POLICY FOR ADOPTION Revisions to Fairer Contributions Policy in the light of the changes to contributions and the Cap and Care Account being introduced by the Care Act 2014.
Implementing the Care Act: Cap on Care Costs Policy	FORMAL POLICY FOR ADOPTION Describes how the cap and care account will be applied in LBB.
Implementing the Care Act: Appeals Policy	FORMAL POLICY FOR ADOPTION A report covering <ul style="list-style-type: none">• A new policy covering the new statutory independent appeals system being introduced by the Care Act 2014• An update on the complaints procedure• setting out the new routes for redress

2.3.2 The requirement for public consultation on these policies is being considered. If it is required then it will take place after the Department of Health publish the Statutory Regulations and Guidance in October 2015.

3. ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED

3.1 None

4. POST DECISION IMPLEMENTATION

4.1 When the DH publishes the final version of the regulations and guidance in October 2015, officers will finalise Barnet's proposed approach and prepare local policies accordingly. A refreshed financial impact model will be delivered in November/December which will take account of the final version of the regulations and guidance

5. IMPLICATIONS OF DECISION

5.1 Corporate Priorities and Performance

5.1.1 Successful implementation of the Care Act will help to support and deliver the Council's strategic objectives as set in the Corporate Plan for 2015-20 – agreed by Council in April 2015:

1. Of opportunity, where people can further their quality of life.
2. Where people are helped to help themselves, recognising that prevention is better than cure.
3. Where responsibility is shared, fairly.
4. Where services are delivered efficiently to get value for money for the taxpayer.

5.1.2 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.

5.2 Resources (Finance & Value for Money, Procurement, Staffing, IT, Property, Sustainability)

5.2.1 It is clear that Phase 2 of the Care Act reforms may have a significant financial impact on social care locally as detailed in the previous report to Committee and this report. Modelling is continually being refreshed to identify the impact of this, however, future decisions on long term funding for Care Act related pressures are yet to be announced.

5.3 Legal and Constitutional References

5.3.1 The Care Act is an overarching piece of legislation which brings together legislation, practice and case law which has developed piecemeal over the decades. It has put on a statutory footing for the first time good practice, such as the establishment of adult safeguarding boards, and has repealed legislation which has been determined as incompatible with the European Convention on Human Rights. It is intended 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. However, it does have a significant impact on existing policies as highlighted in this paper.

5.3.2 The responsibilities of the Adults and Safeguarding Committee are contained within the Council's Constitution - Section 15 Responsibility for Functions (Annex A). Specific responsibilities those powers, duties and functions of the Council in relation to Adults and Communities including the following specific functions:

- Promoting the best possible Adult Social Care services.

- 5.3.3 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.

5.4 **Risk Management**

- 5.4.1 The Care Act sets out a number of new statutory requirements and duties and hence provides a legal basis for challenges where duties are not met. A successful implementation of the Care Act mitigates against the likelihood of this risk.

5.5 **Equalities and Diversity**

- 5.5.1 An Equality Impact Assessment will be carried out on all new policies, services and processes proposed for implementation as a result of the Care Act Implementation Project.

5.6 **Consultation and Engagement**

- 5.6.1 The requirement for public consultation is discussed within this document.

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](#)
- 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. [Care and Support Bill Update \(1.1\)](#)
- 6.5 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 \(2.1\)](#)
- 6.6 The Adults and Safeguarding Committee received a report on the implementation of the Care Act on the 2 July 2014. [The Implementation of the Care Act](#)
- 6.7 The Adults and Safeguarding Committee received a report on the Consultation on the Statutory Guidance on the 31 July 2014. [Response to Consultation on the Care Act Guidance](#)
- 6.7 The Adults and Safeguarding Committee received a report on Implementing the Care Act on the 2 October 2014. [Implementation of the Care Act 2014.](#)
- 6.8 The Adults and Safeguarding Committee received a report on the Universal Deferred Payments scheme on 26 January 2015. [Implementation of the Care Act - Adult Social Care Deferred Payment Policy](#)
- 6.9 The Council's Market Position Statement was published in June 2013 and can be found on the Council's web site: [Barnet's Market Position Statement](#)

- 6.10 Responses to the Barnet Public Consultation on the Care Act 2014. [Responses to the Public Consultation](#)
- 6.11 Equalities Analysis (EqA) on local policies to support implementation of the Care Act 2014. [EqA on Local Care Act policies](#)
- 6.12 The Care Act received Royal Assent on 14 May. [The Care Act 2014](#)
- 6.13 The statutory guidance to support implementation of part 1 of the Care Act 2014 by local authorities was published by the Department of Health in October 2014. [Care and Support Statutory Guidance](#)
- 6.14 The Adults and Safeguarding Committee received a report on the new national eligibility criteria, increased demand, carers contributions and care arrangement fees on 19 March 2015. [Implementing the Care Act 2014: Eligibility; Increased demand; Carers Contributions and Care Arrangement Fees](#)
- 6.15 The Adults and Safeguarding Committee received a report on market shaping and provider failure on 19 March 2015. [Implementing the Care Act 2014: Market Shaping; Provider Failure](#)
- 6.16 The Adults and Safeguarding Committee received a report on carers, prevention, information, advice and advocacy on 19 March 2015. [Implementing the Care Act 2014: Carers; Prevention; Information, Advice and Advocacy](#)
- 6.17 The Care Act 2014 – Consultation on draft regulations and guidance to implement the cap on care costs and policy proposals for a new appeals system for care and support. [Care Act Part 2 Consultation Document](#)