

	<p align="center">Adults and Safeguarding Committee Meeting</p> <p align="center">16 June 2016</p>
<p align="center">Title</p>	<p align="center">Impact of the Care Act 2014</p>
<p align="center">Report of</p>	<p>Dawn Wakeling - Adults and Health Commissioning Director / Director of Adult Social Services. Mathew Kendall – Adults and Communities Director</p>
<p align="center">Wards</p>	<p>All</p>
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<p align="center">Enclosures</p>	<p>None</p>
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Summary

The first phase of the Care Act 2014 came into force on 1 April 2015. The second phase will be introduced from April 2020.

The first phase of the Act:

- ensures that people's well-being, and the outcomes which matter to them, will be at the heart of every decision that is made
- provides for a single national minimum threshold for eligibility to care and support
- puts carers on the same footing as those they care for; national eligibility threshold and right to services
- creates legal duties to prevent and delay needs for care and support and to provide information, advice and advocacy
- puts Adult Safeguarding Boards on a statutory footing. NHS and Police are statutory partners
- embeds rights to choice, personalised care plans and personal budgets, and ensuring a range of high quality services are available locally
- ensures that people do not have to sell their homes in their lifetime to pay for residential care, by providing for a new universal deferred payments scheme
- includes new protections to ensure that no one goes without care if their provider fails, regardless of who pays for their care.

This report provides an update on the impact that the first phase of the Care Act 2014 has had in Barnet.

Recommendations

- 1. That the Adults and Safeguarding Committee note and comment on the impact of the Care Act 2014 as described in this report.**

1. WHY THIS REPORT IS NEEDED

1.1 The first phase of the Care Act 2014 (the Act) was implemented from 1 April 2015. This report provides the Committee with an update on the impact it has had for the Council and local residents. The second phase will be introduced from April 2020.

1.2 The main provisions in the Act include:

- ensuring that people's well-being, and the outcomes which matter to them, will be at the heart of every decision that is made
- a duty to provide prevention, information and advice services to prevent, delay or reduce the needs for care and support of adults and carers
- supporting people with information, advice and advocacy to understand their rights and responsibilities, access care when they need it, and plan for their future needs
- a national minimum threshold for eligibility for council support for both service users and carers
- new entitlements for users and carers:
 - a legal right to a personal budget and direct payments
 - a right to continuity of care after a move to a new area
 - carers right to assessment, support services and review, equal to that of the service user
 - eligible users must be offered independent help in support planning
 - self-funders must be offered advice and support planning for community services
- a universal system for deferred payments
- putting Adult Safeguarding Boards on a statutory footing
- other duties for Local Authorities:
 - a duty to co-operate with relevant agencies
 - a duty to ensure adult social care and housing work together
 - a duty to promote diversity and quality in care and support provision
 - a duty to promote the integration of services
 - a leadership role in situations of care provider failure.

1.3 Prevention, information, advice and advocacy

1.3.1 The Act places a duty on local authorities to provide or arrange for the provision of services, facilities or resources, which would contribute towards preventing, delaying or reducing the development of needs for care and support for adults and needs for support for carers.

1.3.2 The Act also places a duty on local authorities to establish and maintain a service for providing people in its area with information and advice relating to care and support for adults and support for carers.

- 1.3.3 Barnet Council published its Prevention Policy and Information, Advice and Advocacy Policy as agreed at the Adults and Safeguarding Committee on 19 March 2015 prior to implementation of the Act. These set out the Council's broad responsibilities in relation to prevention and information, advice and advocacy.
- 1.3.4 The Council has a range of prevention services, facilities and resources aimed at contributing towards preventing, delaying or reducing the development of needs for care and support for adults and needs for support for carers. Information about these resources is available via Social Care Connect on the Council's website. Some examples are links to learning and employment, financial advice, arts, entertainment, leisure and sporting activities.
- 1.3.5 The approach ensures that people within the borough have access to good information and advice including information on resources in the local community, local support networks and facilities provided by partners and voluntary organisations. We continue to promote diversity in the provision of care and support services to ensure that individuals have a variety of options to choose from including not only traditional care services but wider wellbeing services such as the provision of sport and physical activities across the borough. Using the free Leisure Pass, carers can access free swimming and get discretionary discounts on a wide range of activities such as badminton sessions and group exercise classes.
- 1.3.6 The Council has two key contracts in place to provide information and advice. These are a community advice service contract and a specialist information, advice and advocacy contract. The Lead Provider for these two contracts is Barnet Citizens Advice Bureau. Most of the Council's contracts for prevention services (for example with Age UK, Mencap, Barnet Carers Centre, and Alzheimer's Society) include a provision to provide information and advice in line with their service delivery.
- 1.3.7 The Council has commissioned a Barnet Citizens Advice Bureau to provide specialist health and social care information, advice and advocacy. This ensures that the Council has in place a dedicated support service for people who require access to independent information and advice or advocacy and ensures that the Council can appropriately mitigate a situation such as that which gave rise to a successful judicial review challenge in R(SG) v Haringey LBC and SSHD case¹ where no such services were provided. From July 2015 to March 2016 there were 815 referrals made to advocacy partners.

¹ On 4 August 2015 the High Court gave judgement against Haringey Council in favour of a destitute asylum seeker with mental health problems. The Council had failed to provide the claimant with an independent advocate.

1.3.8 Social work and care staff training now reflects the legislative changes which have occurred. The training promotes the principle that prevention and the provision of good information and advice lie at the heart of good assessment and support planning. It also ensures that staff understand their statutory duties in regards to advocacy. The training provided complements existing training in place regarding mental capacity.

1.3.9 Social Care Direct, the Council's social care contact centre, has seen an increase in contacts since the implementation of the Act. Social Care Direct seeks to resolve calls over the phone or, if this isn't possible, refers them to a social worker. From April 2014 to March 2015, Social Care Direct received 34,284 phone contacts. This has increased to 42,039 for the financial year April 2015 to March 2016, which is a 23% increase in call volumes received. These volumes are for phone calls and not the number of individuals contacting the centre. Sometimes a number of calls are received concerning the same individual.

1.4 Wellbeing, assessment and support planning

1.4.1 The Act places a duty on local authorities to assess adults' needs for care and support and determine whether any of the needs are eligible for care and support.

1.4.2 The Council published its Assessment and Eligibility Policy for Adults in Need as agreed at the Adults and Safeguarding Committee on 19 March 2015 prior to implementation of the Act.

1.4.3 Before the Act was implemented, mandatory training was provided to all staff combining e-learning modules with group sessions focused on specific aspects of assessment including national eligibility threshold and working with the Wellbeing principle.

1.4.4 Assessment and support planning tools were amended and updated to reflect the new framework and facilitate practice in areas such as referrals for advocacy and independent financial advice.

1.4.5 While the language and framework around the assessment and support planning process has changed, the application of the national eligibility framework has not resulted in a significant difference in the number of adults assessed as eligible for support. This is considered to be as a result of the similar thresholds of need between the Fair Access to Care Eligibility Criteria Critical and Substantial levels and the new criteria. The table below shows the numbers of adults that were assessed as eligible for Council support and the cost of their support plans for 2014/15 and 2015/16².

	Number of assessments of new clients	Of these, total number going on to receive services	Total number of service users in period³	Total cost of services (net)
2014/15	2557	1982	7256	£72,809,715
2015/16	2642	1959	7150	£73,250,377

1.4.6 Nevertheless, the new eligibility criteria has triggered a desire for a more creative and outcome-based approach to assessment which is being developed through the pilots for adults assessment hubs and trials for strength-based practice.

1.4.7 The potential for increased demand around support planning, in particular with reference to self-funders, has been mitigated by an already well-established use of organisations such as Inclusion Barnet and My Care My Home to provide support and information when appropriate. From April 2015 to March 2016, My Care My Home received 111 referrals and Inclusion Barnet received 139 referrals.

1.5 Carers

1.5.1 The Act put in place a consolidated legal framework for carers that placed their needs on the same statutory footing as those receiving care and support. The demand modelling carried out prior to implementing the Act projected a significant potential increase in demand for carers' assessments. However, this has not been borne out in practice and there has not been an increase in the number of carers in the borough who chose to contact the Council. From April 2014 to March 2015, there were 1,394 carers' assessments and from April 2015 to March 2016 there were 1,145⁴ carers' assessments. These figures refer only to carers' assessments carried out by the Council and do not include assessments or information, advice and guidance carried out by local partner organisations.

1.5.2 The Council published its Assessment and Eligibility Policy for Carers as agreed at the Adults and Safeguarding Committee on 19 March 2015 prior to implementation of the Act.

² Note that 2015/16 figures are likely to change as this data continues to be cleaned and validated.

³ The total number of service users is the total number of people receiving a service in the period.

⁴ Note that 2015/16 figures are likely to change as this data continues to be validated.

1.5.3 The Adults and Communities Delivery Unit has carried out training with staff on the new carers' rights. Carers assessment forms have been updated to comply with the legal requirements of the Act and to take into account the new national eligibility criteria.

1.5.4 Since the Act was implemented, the Council has published a Carers and Young Carers Strategy 2015-20. This was noted at Policy and Resources Committee on 16 February 2016 having been approved by the Barnet Carers Strategy Partnership Board on 7 December 2016. It outlines the Council's vision for ensuring that carers can access robust support to help them to continue in their caring role. This strategy outlines the main priorities that the Council will focus on over the next five years and sets out the outcomes which we will achieve for carers and young carers within Barnet. The outcomes are:-

- carers and young carers have the right support and tools to manage their own health and wellbeing which they can draw upon in their everyday lives
- carers and young carers feel actively supported
- carers' voices are heard and they receive recognition for the valuable contribution that they make
- carers and young carers are safeguarded from harm
- carers can have a life of their own, including being able to balance work and caring
- carer friendly communities are embedded throughout Barnet. Local services and systems will reach out to support carers and young carers wherever they can, working together to help support carers and young carers in their role.

1.5.5 The strategy is supported by an action plan to deliver these outcomes and focuses on the following three priority areas:-

- proactive identification of carers and young carers
- individualised support so that carers and young carers can maintain their own health and wellbeing
- recognising carers and young carers as key partners in care and support and recognising the important role they play in helping to support and manage the demand on statutory services.

The Council is currently procuring new carers and young carers support services to further strengthen support for carers within the borough. The new service will come on stream on 1 October 2016.

1.6 **Deferred payments**

1.6.1 The Act places a new duty on local authorities to offer a deferred payment to people who are assessed as needing residential/nursing care and when their main home has been taken into account when financially assessing a contribution.

1.6.2 A deferred payment is a way of deferring the costs of care. The Council's universal deferred payments scheme has been in place since April 2015,

having been agreed by the Adults and Safeguarding Committee on 26 January 2015.

- 1.6.3 The demand modelling indicated that there would be up to 30 new entrants into the scheme during the first year. During 2015/16, there were 9 people who entered into a deferred payment agreement with the Council to fund the cost of care. The total value of these payments was £146,287. The scheme is self-financing as interest is chargeable on the amount deferred and the cost of the deferred payment is recouped when the property is sold.

1.7 **Managing the care market**

Provider Failure

- 1.7.1 The Act places a new duty on local authorities, to temporarily meet the care and support needs of an adult and the support needs of a carer when a registered care provider becomes unable to carry on a regulated activity, establishment or agency because of business failure.
- 1.7.2 The Council published its Provider Failure Policy as agreed at the Adults and Safeguarding Committee on 19 March 2015 prior to implementation of the Act.
- 1.7.3 Whilst Barnet has not experienced the business failure of a provider, Barnet has experienced the closure of a care home with nursing accommodation for seven highly vulnerable residents following intervention by the Care Quality Commission and the Council for quality reasons. Following action taken by the regulator to deregister the home, the Adults and Communities Delivery Unit worked closely with NHS Barnet Clinical Commissioning Group and the care home to manage the safe transfer of all residents to new accommodation.
- 1.7.4 This was undertaken through a co-ordinated approach, led by Adults and Communities Care Quality Service, which ensured that each individual was safeguarded and mitigated the risks associated with moving vulnerable people.
- 1.7.5 Following this, the Council has continued to work in partnership with NHS Barnet Clinical Commissioning Group and other local authorities on a number of further instances of provider quality concerns. This work has informed the creation of risk assessment tools and good practice guidance which is proving helpful in continuing to safeguard vulnerable people and reducing the likelihood and impact of a provider failure.

Market Shaping

- 1.7.6 The Act places new duties on local authorities to promote the efficient and effective operation of the market for adult care and support as a whole.
- 1.7.7 The Council has published a Market Position Statement to help in the development of a high quality sustainable market of available social care provision.

- 1.7.8 The Council has joined the West London Alliance collaborative on commissioning for residential and nursing homes and held two provider engagement events on the future plans for this and the supported accommodation strategy. There were market engagement events regarding dementia and stroke community services including the voluntary sector. Commissioning contacted providers individually for feedback.
- 1.7.9 The Council has engaged all mental health providers in discussions for the shaping of future mental health provision in the borough. This is feeding into procurement plans for 2017/18.
- 1.7.10 Through working with Barnet Homes, developers and private landlords, the Council is diversifying its accommodation offer to help more people live independently. This will provide for increased numbers of home adaptations, building more accessible and extra care housing and greater use of assistive technology. A Shared Lives scheme is being implemented to support disabled people live in family homes and develop their independence. The Council's neighbourhood model of community support for older people focusses on wellbeing and inclusion and will continue to support a wide and expanding range of activities including gardening and lunch clubs.
- 1.7.11 The Adult and Safeguarding Committee's Commissioning Plan 2015–2020 sets out how the Council's will shape the market through its commissioning intentions for each service component.
- 1.7.12 The Adults and Communities Delivery Unit has rolled out a new model of contracting and quality improvement. This built on the work piloted by the Integrated Quality in Care Homes team working with care home providers to share good practice and support improvement.
- 1.7.13 The Adults and Communities Delivery Unit now delivers a programme of support and engagement with providers of homecare and supported living services. There is also a renewed focus on improving clinical interventions within care homes working jointly with NHS Barnet Clinical Commissioning Group in a shared approach.

2. REASONS FOR RECOMMENDATIONS

- 2.1 This report is provided as an update to the Committee at the request of Committee members.

3. ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED

3.1 Not applicable.

4. POST DECISION IMPLEMENTATION

4.1 Not applicable

5. IMPLICATIONS OF DECISION

5.1 Corporate Priorities and Performance

5.1.1. Successful implementation of the Act helps to support and deliver the 2015 - 2020 Corporate Plan priorities of growth and responsible regeneration; managing demand for services; transforming services; and more resilient communities.

5.1.2. The pilots for the adults' assessment hubs are fully aligned with the Community Asset Strategy Implementation Plan which aims to ensure that the Council's estate is being used efficiently to support the Council's priorities and create the best possible value for residents. This includes exploring partnership working with other public bodies, and finding opportunities to create 'community hub' facilities in which groups might be co-located.

5.1.1 The Adults and Safeguarding Committee's Commissioning Plan 2015 - 2020 (2016/17 addendum and targets) provides for further implementing the Act in the following ways:

- re-modelling the approach to assessment and support planning to meet the increase in demand predicted to arise from the new cap on care costs
- improving advice and advocacy services with a greater availability of helpful information to support ageing well
- greater support to enable carers to continue in their caring role
- implementing the new pan-London safeguarding procedures to ensure a consistent approach to safeguarding across London.

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

5.2.1 There are no specific financial implications arising from this report.

5.3 Social Value

5.3.1 The Public Services (Social Value) Act 2013 requires people who commission public services to think about how they can also secure wider social, economic and environmental benefits. Before commencing a procurement process, commissioners should think about whether the services they are going to buy, or the way they are going to buy them, could secure these benefits for their area or stakeholders.

5.4 Legal and Constitutional References

5.4.1 The Care Act 2014 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.

5.4.2 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.

5.5 Risk Management

5.5.1 The Care Act 2014 sets out a number of new statutory requirements and duties and hence provides a legal basis for challenges where duties are not met. Successful implementation of the Act mitigates against the likelihood of this risk.

5.6 Equalities and Diversity

5.6.1 The 2010 Equality Act outlines the provisions of the Public Sector Equalities Duty which requires Public Bodies to have due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Equality Act 2010
- advance equality of opportunity between people from different groups
- foster good relations between people from different groups.

5.6.2 The protected characteristics are:

- Age
- Disability
- Gender reassignment
- Pregnancy and maternity
- Race
- Religion or belief
- Sex
- Sexual orientation.

5.6.3 The broad purpose of this duty is to integrate considerations of equality into day business and keep them under review in decision making, the design of policies and the delivery of services.

5.6.4 On 1 October 2012, new provisions in the Equality Act came into force banning age discrimination in health and social care. This is in line with the duties incumbent on all public bodies through the Equalities Act 2010. Adult Social Care works within LBB'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.

5.6.5 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 support or services. However, it does require the local authority to have a transparent and fair rationale for different approaches or support offered to different age groups, just as it already does for current positive action in place, such as providing interpreters.

5.6.6 However, there is a general risk from this prohibition applicable to all local authorities, 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.

5.6.7 An Equalities Impact Assessment was undertaken on the areas of discretion in the Act and was presented to the Adults and Safeguarding Committee on 18 March 2015 in a background paper to support a decision on the local policies to implement the Act.

5.7 Consultation and Engagement

5.7.1 The local policies which support implementation of the Act were subject to public consultation. Consultation questions primarily focussed on the areas of discretion which councils were required to consider exercising when implementing the Act. Responses to the consultation were presented to the Adults and Safeguarding Committee on 19 March 2015 in a background paper to support a decision on the local policies to implement the Act.

5.8 Insight

5.8.1 Not applicable.

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 [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](#)

- 6.8 The Adults and Safeguarding Committee received a report on Implementing the Care Act on the 2 October 2014. [Implementation of the Care Act 2014.](#)
- 6.9 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](#)
- 6.10 The Adults and Safeguarding Committee received a report setting out the service development challenges required in adult social care in order to respond to the challenges of increasing growth in demand, enhanced statutory duties and continued financial austerity on 26 January 2015. [The Implications of the Commissioning Plan and The Care Act 2014 for Adult Social Care in Barnet](#)
- 6.11 The Adults and Safeguarding Committee received three reports on 19 March 2015. These set out the new policies required to implement the Care Act 2014 in Barnet.
- [Implementing the Care Act 2014: Eligibility; Carers contributions; Care arrangement fees; Increased demand](#)
 - [Implementing the Care Act 2014: Market Shaping; Provider Failure](#)
 - [Implementing the Care Act 2014: Carers; Prevention; Information, Advice and Advocacy](#)
- 6.12 On 16 February 2016, the Policy and Resources Committee noted the contents of the [Barnet Carers and Young Carers Strategy 2015-20](#) which the Barnet Carers Strategy Partnership Board approved on 7th December 2015 and authorised the procurement of a carers and young carers support services tender to commence from April 2016.
- 6.13 Responses to the Barnet Public Consultation on the Care Act 2014. [Responses to the Public Consultation](#)
- 6.14 Equalities Analysis (EqA) on local policies to support implementation of the Care Act 2014. [EqA on Local Care Act policies](#)
- 6.15 The Care Act received Royal Assent on 14 May. [The Care Act 2014](#)