



Adults and Safeguarding Committee

6 June 2022

Title	Adult Social Care Reform
Report of	Chair of the Adults and Safeguarding Committee
Wards	All
Status	Public
Urgent	No
Key	No
Enclosures	None
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Summary

All councils with adult social care responsibilities have new responsibilities to implement over the next 12 to 18 months, as a result of the new Health and Care Act and the government's national plan for adult social care reform. This report provides an overview of the changes and new requirements for social care arising from these changes. It sets out the key areas that the committee will consider over the next year, along with next steps and planned implementation activity. This report will be supplemented by a presentation at the committee meeting.

Officers Recommendations

1. That the Adults and Safeguarding Committee note the changes to social care and the requirements for the council arising from the Health and Care Act and national plan for social care reform.

1. Why this report is needed

1.1 The 'People at the Heart of Care' adult social care White Paper was published in December 2021 and set out a ten-year vision for care and support in England. The White Paper was co-developed with both adults with lived experience of social care and the sector, and sets out the following objectives:

- **People have choice, control & support to live independent lives** - including greater involvement of adults and their unpaid carers in the making of care decisions, greater utilisation of technology, information and increased focus on helping people with disabilities into employment
- **People can access outstanding quality & tailored care & support** – including making high-quality and timely data available, strengthening assurance, further integrating social care with housing, support to the workforce to ensure future sustainability, increasing recognition and support for unpaid carers
- **People find adult social care fair & accessible** - including a price cap for those funding their own care, ensuring fees are transparent, ensuring people who self-fund their care do not have to pay more than local authorities for the same service and ensuring local authorities pay a fair rate to care providers.

1.2 The Health and Care Act, which became law at the end of April 2022 sets out a series of changes for both the NHS and social care, including the creation of integrated care systems (ICSs) as statutory bodies. The key requirements and changes for councils with social care responsibilities arising from this legislation and the national plan for adult social care reform (Build Back Better – our plan for health and adult social care, published in September 2021) are summarised below.

1.3 A new CQC led assurance framework of Local Authorities

The Health and Care Act introduces a new national assurance regime of council adult social care responsibilities. Full details have yet to be published by the Care Quality Commission, but the assurance regime is expected to include enhanced data collection, monitoring, self-assessment and formal inspection of councils' social care functions, with intervention powers where serious concerns are identified. The inspection will focus on council delivery of Care Act duties and is expected to cover a wide range of areas including people's experience of care & support, safeguarding and commissioning. At this point the CQC assessment framework is expected to go live from April 2023, with inspections from October 2023. It is anticipated that all councils will need to invest time and resources in preparation for the new assurance regime once the final process is published, and that this will be a significant focus for the work of council officers and the committee in the future.

To date, key timeframes outlined nationally include:

- i. Establishment of a new data framework by Spring 2023 including project, client level and dashboard data
- ii. The CQC assessment framework goes live from April 2023/24
- iii. The Legal framework for intervention will be in place and the guidance will be published by 2023/24

1.4 Cap on care costs

Unlike NHS services, adult social care support through councils is not universally free at the point of delivery. Individuals are means-tested and those with assets/capital above a threshold set nationally are expected to pay some or all of their care costs. The Care Act 2014 included provisions to introduce a cap on the costs any individual would pay toward their care, however, this was not implemented. The cap is now being introduced through the reform plan and the Act. From October 2023, a new £86,000 cap on the amount anyone in England will need to spend on their personal care over their lifetime will be introduced, for people whose care needs meet the national eligibility criteria set in the Care Act and associated guidance. At the same time, the upper and lower thresholds of the means test threshold will be increased from their current levels of £14,250 - £23,250, to £20,000 - £100,000. The changes are:

- i. Anyone with assets of less than £20,000 will not have to make any contribution for their care from their savings or the value of their home.
- ii. Anyone with assets of between £20,000 and £100,000 will be eligible for some means-tested support.
- iii. The new upper capital limit of £100,000 is more than four times the current limit of £23,250, meaning that many more people will become eligible for some means-tested Local Authority support.
- iv. To allow people receiving means-tested support to keep more of their own income, the Minimum Income Guarantee (MIG) will no longer be frozen for those receiving care in their own homes nor will the Personal Expenses Allowance (PEA) for care home residents. From April 2022 both will rise in line with inflation.
- v. The cap covers care for those whose needs meet Care Act eligibility criteria. It will not for example cover daily living costs (DLCs) for people in care homes, and people will remain responsible for their daily living costs throughout their care journey, including after they reach the cap.

Draft guidance on the Cap was issued in March 2022, seeking views on how the cap on care costs would operate in practice, as well as to inform how government can support local authorities in their preparations for its implementation from October 2023.

The guidance document 'supporting local preparations' sets out key areas for consideration and action, including:

- i. Resources - the new cap and extended means test will mean increased costs for councils and the need for sufficient workforce to carry out additional assessments, reviews, case management and monitoring progress towards the cap. There will also be upfront implementation costs, such as the recruitment and training of additional staff and system upgrades. Typically, additional duties for councils from legislation attract specific 'new burdens' funding from central government and therefore the council should receive funding towards the cost of these additional resource requirements.
- ii. Understanding the demand (cost modelling) – it is anticipated that a significant number of people who would previously not have had any contact with the local authority may now approach it to access the cap. Additional demand will also be generated by changes in the means test capital limits. It will also be important to

understand the impact on the council's budget from the changes to the means test threshold, as at present c. £13m of income is received each year from individual contributions to care costs.

- iii. Awareness raising – there will be a national government campaign on 'Transforming social care' to help people understand the reforms. This will include the provision of a new website with Q&A, case studies, and downloadable resources on charging reform. Local authorities will also be required to take steps to raise awareness of the reforms, in line with the duty to establish and maintain information and advice services relating to care and support for all people in its area.
- iv. Conducting early assessments - to help manage demand for assessments and ensure people can start measuring their progress towards the cap from October 2023, local authorities are expected to conduct care & support needs and financial assessments of self-funders where appropriate 6 months in advance, from April 2023 onwards.
- v. Systems requirements - Councils will be required to monitor each individual's progress towards the cap (described as metering in the national documents) and provide people with 6-monthly care account statements digitally. As a result, IT systems for ongoing case management will need to be revised to incorporate the additional requirements for care accounts (including statements) and changes to charging and metering. All councils were asked by the Department of Health and Social Care (DHSC) to complete a technology readiness assessment in May 2022 and the Department is also working with care system providers to develop the IT systems needed.

There will be a considerable amount of work to implement this project including reviewing current processes, ensuring sufficient capacity to respond to increased demand for care needs and financial assessments from residents, updating and consulting on policies, developing systems to deliver the technical requirements, working with providers to ensure their information and invoicing are compatible with the cap, providing statements to residents, and communications. The financial implications of both the means test threshold change and the cap will also need to be assessed. At this point, only high level draft guidance has been issued and it is anticipated that the full extent of the preparatory work required will become clearer when detailed guidance is available.

The key dates:

- April 2023: Commence early assessments
- October 2023: the new charging cap goes live set at £86,000, along with changes to the means test threshold (Upper Capital Limit £100,000/Lower Capital Limit £20,000)

1.5 Fair Cost of Care

These changes encompass a number of things. The first is for councils to review the fees they pay care providers and move towards paying a 'fair cost.' This arises from concerns expressed nationally that the rates paid by some councils do not cover the full cost for care providers of providing the service. Councils are therefore required to conduct two pieces of analysis: one on the cost of residential care for the over 65s, and one on the cost of homecare for the over 18s. Councils are required to publish this analysis and also submit it to DHSC by October 2022. In addition, councils are required to develop and publish a market sustainability strategy which sets out how they will move toward paying providers a fair cost of care, a draft of which must also be submitted to DHSC in October. In September 2021, the Government announced £1.4bn nationally to 'ensure that local authorities are able to move towards paying a fair cost of care' as part of the overall funding allocated to support charging reform. Of this, Barnet council has received £1m of additional funding for 2022/23. Additional funding in future years is contingent on completing the work described in this paragraph.

1.6 From October 2023 the Government will also bring section 18(3) of the Care Act 2014 into operation. This section of the Act enables people who fund their own residential care to ask their local authority to arrange care on their behalf at the rate the council would pay (those accessing home care can already do so). This is in order to reduce the differential between what self-funders and local authorities may be charged for the same services. To support this change, local authorities are asked to consider what impact this may have on providers in their area (and whether some rely on additional income from self-funders within their business models), with a view to ensuring that when they do take on additional responsibilities to arrange care for self-funders, that the domiciliary care and care home markets in their area are sustainable.

1.7 The key activities for 20202/23 required of councils by government are summarised below.

- i. Engage with local providers to improve data on operational costs and number of self-funders to better understand the impact of reform on the local market
- ii. Conduct cost of care exercises – produced by surveying local providers for 65+ residential and nursing care and 18+ homecare to understand what the median costs of care are locally within these markets and to help determine what sustainable rates are for the services they provide.
- iii. Produce a provisional market sustainability plan setting out local strategy for the next 3 years (2022 to 2025) – using the cost of care exercise as a key input, this provisional plan will demonstrate the pace at which local authorities intend to move towards a sustainable fee rate and to shape local markets to respond to need. The council will involve people who draw on care and support in the development of this plan.
- iv. Strengthen capacity to plan for, and execute, greater market oversight (as a result of increased section 18(3) commissioning) and improved market management. This will require consideration of the staffing requirements within the council's team.

- v. Each council has been given some additional funding to use towards a fair cost of care, with Barnet's allocation for 2022/23 being £1m. Councils have to use the additional central government funding to increase fee rates, as appropriate to local circumstances and produce a spend report – this will detail how money has been allocated to care markets to support sustainable commissioning. This will need to be evidenced to central government in order to receive funding in future years.

1.8 The council has used evidence-based approaches to define the fees it pays for care and support for a number of years. For residential and nursing care for the over 65s, the council commissions an annual independent cost analysis from a specialist consultancy, to determine a minimum weekly sustainable price for residential and nursing care. This sets the minimum rate that the council will not go below. The council will also pay in excess of this fee rate where this is needed to secure the right care for the person. The minimum sustainable price is modelled on the assumption that all the residents in the home are placed by the council, i.e., without any self-funders. In recent years, the council has undertaken this exercise with the four other councils in north London, to determine a shared sustainable rate for care homes.

1.9 For homecare, the council uses a framework approach, with circa 60 providers on the framework. Home care agencies applying to join the framework set their own fee rates, and inflationary uplifts are built into the contracts.

1.10 The adult social care team has developed a project to deliver the Fair Cost of Care requirements and are working to complete the activities listed above within the timescales set by Government. The cost of care exercises and the market sustainability strategy will be presented to the Adults and Safeguarding Committee in September 2022.

2. Reasons for recommendations

- 2.1 It is important for the Committee to be briefed and for local preparations to be made in Barnet for the timely implementation of the reforms, in line with national timelines for the introduction of new requirements on adult social care.

3. Alternative options considered and not recommended

- 3.1 None in the context of this report.

4. Post decision implementation

- 4.1 Barnet is developing its programme plans and will continue to develop plans as more guidance is issued. An officer led programme board to oversee the delivery of the plans is in place, chaired by the Executive Director – Adults and Health. More detailed guidance, including implementation guidance from DHSC, is expected on both the assurance regime and the cap on care. Progress updates and decisions will be brought back to the Committee as required by the scope of the reforms.

5. Implications of decision

5.1 Corporate Priorities and Performance

5.1.0 Social Care Reform implementation, focussing on choice, control, quality, and accessibility is a legal requirement for councils with adult social care responsibilities.

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

5.2.0 When understanding the resource implications of the charging reform there are four separate elements:

- a) Increased assessments, reviews, and care management responsibilities.
- b) The increase in both the lower and higher thresholds which affect when the local authority starts to pay for care and how much it contributes.
- c) The introduction of the cap which limits the amount that individuals might contribute towards the cap.
- d) The implementation of Section 18 (3) of the Care Act for those in care homes. This means that self-funders can ask the local authority to commission care at local authority fee levels.

5.2.2 Work will be undertaken to assess the financial and resource impact of the above elements and the broader impact on the council's medium term financial strategy. Legal and Constitutional References

5.2.1 The Health and Care Act 2022 introduces provisions relating to the integration of health and care and new Care Quality Commission review duties. The Act will place Integrated Care Systems (ICS) onto a statutory footing from 1 July 2022, when Integrated Care Boards will replace CCGs. This will sit alongside the creation of Integrated Care Partnerships, and increased partnership arrangements between the NHS and Local Authority social care provision. The Act removes existing competition rules and formalises ICSs (integrated care systems) as commissioners of local NHS services. Specifically, the two component parts of an ICS – the ICB (integrated care board) and the ICP (Integrated Care Partnership) will now have statutory status and will collectively hold the ICSs legal powers and responsibilities. ICBs will be responsible for the NHS functions of an ICS, while ICPs will oversee their wider public and population health efforts.

- i. There will be a new duty for the secretary of state to publish a report at least once every five years on workforce planning. This would describe the system in place to for assessing and meeting workforce needs.
- ii. The new Act adds to existing regulations the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 to impose a duty on the Care Quality Commission (CQC) to review and make an assessment of the performance of English LAs in their delivery of their functions under Part 1 of the Care Act 2014. The CQC will also be required to publish a report of its assessment
- iii. The new duty for the CQC will sit alongside their existing powers and duties to undertake special reviews or investigations under section 48 of the Health and Social Care Act 2008.
- iv. As set out in the report, s18 (3) of The Care Act 2014 will be implemented to allow for self funders to ask the LA to commission care at the better value cost from 2023

- v. The Government will introduce a cap on care costs (by amending the Care Act 2014) to apply from 2023 which will place an £86,000 cap on the amount to be spent on personal care in a lifetime, and has raised the upper capital limit to £100 000, and the lower limit to £20,000. The cap will not cover daily living costs. Statutory Guidance is awaited. The Minimum Income Guarantee will be unfrozen to rise in line with inflation

5.2.2 The council's Constitution (Article 7, Article 7 – Committees, Forums, Working Groups and Partnerships) sets out the responsibilities of all Committees.

Responsibilities for the Adults & Safeguarding committee include:

- Responsibility for all matters relating to vulnerable adults, adult social care and leisure services
- Work 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 to promote the Health and Well Being Strategy and its associated sub strategies
- To submit to the Policy and Resources Committee proposals relating to the Committee's budget (including fees and charges) for the following year in accordance with the budget timetable
- To make recommendations to Policy and Resources Committee on issues relating to the budget for the Committee, including virements or underspends and overspends on the budget. No decisions which result in amendments to the agreed budget may be made by the Committee unless and until the amendment has been agreed by Policy and Resources Committee
- To receive reports on relevant performance information and risk on the services under the remit of the Committee

5.3 Insight

5.3.0 Insight data into the care market, including demand, utilisation, estimation of numbers of self-funders, has been used to inform sustainable pricing and sustainability work with the care market to date and this data is also being used to plan for the Fair Cost of Care and Care Cap implementation. In addition to local analysis, the council is part of a programme of work taking place across North Central London (NCL), as well as the ADASS region to model the impact of and prepare for the changes.

5.3.1 The council will continue to use data and insight to understand changes to needs and demand in social care; to improve and target prevention approaches; to improve access to information and advice for residents; and to understand the quality and impact of the commissioned services. This includes using an equalities and inclusion 'lens' to understand who accesses services, how these are experienced and to identify and tackle any disproportionality in this access and service experience.

5.4 Social Value

5.4.0 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. As part of any commissioning work related to Social Care Reform implementation, the council must consider the requirements of this act and the council's Social Value Policy and ensuring the most benefit for Barnet residents.

5.5 Risk Management

5.5.0 If the council did not take timely action to implement the reform agenda, then there is a risk that implementation could be delayed, or the quality of change delivered may be negatively impacted. The work undertaken to date and the programme of delivery planned mitigates this risk and is supported by clear governance arrangements. Risks relating to the implementation of Social Care reform will be formally managed through the Adults and Health risk register in line with the corporate approach to risk management, with a dedicated risk and issues log in place for each aspect of the reforms. Financial, resourcing, service, operational and reputational risks and issues will be detailed for each aspect of the reforms as part of the council's preparations.

5.6 Equalities and Diversity

5.6.0 Decision makers should have due regard to the public sector equality duty in making decisions. The statutory grounds of the public sector equality duty are found at section 149 of the Equality Act 2010 and are as follows:

A public authority must, in the exercise of its functions, have due regard to the need to:

- a) Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- b) Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- c) Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

5.6.1 This report sets out a number of reforms and new legislation that impose new statutory duties on the council that must be complied with. The council must meet those duties in full and therefore Equality Impact Assessments do not feature in accepting these duties during this phase. However, how the council discharges those duties might involve different options and the development of new or updated policies; as such, the council will assess and give due regard to equality impacts, as part of meeting its duties under s149 Equality Act.

5.7 Corporate Parenting

5.7.0 In line with Children and Social Work Act 2017, the council has a duty to consider Corporate Parenting Principles in decision-making across the council. The outcomes and priorities in the Barnet Plan reflect the council's commitment to the Corporate Parenting duty to ensure the most vulnerable are protected and the needs of children are considered in everything that the council does. Services that are within the remit of Social Care Reform implementation are relevant to care experienced adults with care and support needs including eligible needs under the Care Act 2014. This includes those with special educational needs and disabilities, those with caring responsibilities and those requiring access to mental health services.

5.8 Consultation and Engagement

5.8.0 This report sets out a number of reforms and new legislation that impose new statutory

duties on the council. The council must meet those duties in full and therefore consultation does not feature in accepting these duties, and there is no statutory duty to consult in this phase. However, how the council decides to discharge those duties might involve different options and the development of new or updated policies; as such, the council may have either a duty to consult or choose to consult as work progresses. To date, Barnet has actively encouraged consultation and engagement in relation to reform. The council has participated in national consultations on reform and has participated in regional activity related to this agenda. The council is involving residents with lived experience of care and support inputting into our planning.

5.9 Environmental Impact

5.9.0 There are no direct environmental implications from noting the recommendations.

6. Background papers

6.1 None