

**CARE ACT 2014 DRAFT POLICY FRAMEWORK**

*To:* **Adults Committee**

*Meeting Date:* **6<sup>TH</sup> January 2015**

*From:* **Adrian Loades, Executive Director: Children, Families and Adults Services**

*Electoral division(s):* **All**

*Forward Plan ref:* **Not Applicable**      *Key decision:* **No**

*Purpose:* **The paper sets out the draft policy framework for meeting the requirements of the Care Act 2014. The policy framework focuses on those parts of the Act that the Council has to implement in April 2015.**

*Recommendation:* **The Committee is asked to**

- a) consider, comment on and provide a steer on the draft Care Act 2014 policy framework and statements for consultation,**
- b) agree that a consultation on the policy framework should be commenced prior to final approval of the framework in March 2015**

<b><i>Officer contact:</i></b>	
<b>Name:</b>	<b>Claire Bruin</b>
<b>Post:</b>	<b>Service Director, Adult Social Care</b>
<b>Email:</b>	<b>Claire.bruin@cambridgeshire.gov.uk</b>
<b>Tel:</b>	<b>01223 715665</b>

## **1.0 BACKGROUND**

- 1.1 Part 1 of the Care Act 2014 represents a fundamental revision of adult social care legislation, and an updating of existing finance, policy and practice. It simplifies, consolidates and improves a confusing and sometimes conflicting legislative framework that has developed over the last 60 years.
- 1.2 The Act contains some clauses which are new in law but not new in policy and practice, as well as new provisions and duties. Although the Act builds on existing areas of policy and practice, implementation and achieving compliance by the 1<sup>st</sup> April 2015 is a major undertaking. This work is being managed through the Care Act Programme Board. The consultation on the draft regulations and guidance for the Act closed on 15 August and the final regulations and guidance were published in late October.

## **2.0 POLICY FRAMEWORK TO SUPPORT THE IMPLEMENTATION OF THE CARE ACT**

- 2.1 To support the delivery of the requirements of the Act, the Council has developed a policy framework that will provide clear direction to staff who are implementing the provisions of the Act and transparency for service users, carers, the general public and partner organisations. The framework is attached as appendix 1. The policy framework reflects and underpins the new model of social work/social care (Transforming Lives) and will support the most efficient and effective use of the Council's resources. The policy framework consists of a number of policy statements that covers all the main aspects of the Act, as set out below;

- Wellbeing
- Prevention
- Information & advice
- Integration, cooperation and partnerships
- Market shaping and provider failure
- Adult safeguarding
- Assessment of care and support needs
- Advocacy
- Support planning
- Direct payments
- Ordinary residence rules
- Continuity of care
- Transitions
- Prisoners
- Financial contributions
- Deferred payments

- 2.2 Each policy statement contains sections detailing:

- The scope of the policy and the requirements established via the Act
- Definitions relevant to the specific policy statement

- An outline of any universal duties established via the Act
- An outline of those duties applicable for people who have care and support needs
- A final section entitled “what does it mean for me?” offering practical examples for;
  - Cambridgeshire residents
  - People with care and support needs
  - Carers
  - Professional staff

Taking this approach means that each policy statement can be referred to individually as well as being seen as a part of the overall policy framework.

### **3.0 NEXT STEPS**

3.1 Following approval by Adults Committee, the intention is to;

- i. issue a 30 day consultation on the policy statements
- ii. on consultation closure, to reflect on feedback and undertake any policy statement revisions
- iii. seek sign-off from Adults Committee in March 2015
- iv. implement the policy framework on the 1<sup>st</sup> April 2015
- v. undertake a 12 month review to analyse the understanding and application of the policy statements. The outcome of this review and any recommended material changes to the policies will be presented to the Adults Committee at that point.

### **4.0 SIGNIFICANT POLICY CHANGES**

4.1 The Act impacts on the entire adult social care function. It provides a legal framework for areas of existing policy and practice, such as the promotion of preventative services, the use of direct payments and the safeguarding of adults from abuse and neglect. It also gives local authorities new powers and duties to support both people with care and support needs and the wider population as a whole. The most significant implications (due to the impact on financial or social care practice) in the Act are reflected in the following policy statements:

#### **4.2 Market shaping and provider failure**

4.2.1 The Council interacts with the local care market through the direct commissioning and contracting of services for people with care needs, or indirectly by enabling service users to use direct payments to ‘micro-commission’ their own care and support services. The Act outlines a set of principles that should underpin the Council’s market-shaping and commissioning activity, to ensure a high-quality, responsive, vibrant care market.

4.2.2 There is no formal system currently in place for monitoring a care provider’s financial stability. This means there is no early warning

that a crisis may arise, nor anything in place to help resolve the problems it may cause people. The failure of a large care provider, Southern Cross, in 2011 highlighted these issues. The interruption of care services, or the worry that this might happen, can affect the wellbeing of care users. It can place stress on them, their families, friends and carers. The Act seeks to safeguard against this by giving new powers to prevent provider failure to the Care Quality Commission (CQC), and new duties to act in the event of provider failure to local authorities.

4.2.3 The Market Shaping and Provider Failure Policy Statement (section 5 in the policy framework) emphasises the new duties for shaping the local care market, ensuring it meets the care and support needs of local residents, whether arranged and funded by the Council, privately or via other means. It also covers how, and under what circumstances, the Council should intervene as a result of provider failure.

4.2.4 Provider failure occurs when a provider is unable to exercise its normal day-to-day duties, due to a specific set of circumstances, such as;

- the appointment of an administrator
- a receiver is appointed
- a winding up order is made
- an application for bankruptcy is submitted
- the charity trustees of the provider become unable to pay their debts

Whilst provider failure is a rare occurrence, it does happen, as was seen in the failure of the Southern Cross care homes in 2011.

4.2.5 This policy statement contains a new charging policy that would be applied in two very specific circumstances following provider failure. These are;

- i. The Council arranging alternative services for someone who is receiving care that is funded by another local authority. In this event, the funding authority would be charged the cost of arranging the alternative care.
- ii. The Council arranging services for someone who is funding the costs of their own care. In this event, the individual making the request would be charged the cost of arranging the alternative care.

This policy is in keeping with the new duties established in the Act. The underlying principle in both cases is that there should be no costs incurred by the local tax payer when exercising these new duties.

4.2.6 A worked example:

A 40 bed care home in Cambridgeshire goes into administration and the decision is made to close the home, pending sale.

- 25 of the beds are occupied by people who are funded by Cambridgeshire County Council
- 10 of the beds are occupied by people who are funding their own care
- 3 of the beds are occupied by people who are funded by a

- neighbouring local authority
- 2 beds are unoccupied

The CFA Brokerage Team has been asked to arrange alternative care for the care home residents.

The 25 people funded by Cambridgeshire County Council would be placed in alternative accommodation at no charge to the individual.

The 10 people who are funding their own care are each charged a one-off fee to reimburse the council for the costs incurred by the CFA Brokerage Team in finding them alternative accommodation.

The neighbouring authority is invoiced for the costs incurred by the CFA Brokerage Team in finding alternative accommodation for the 3 people placed in the care home.

In the latter two examples, the charge is likely to be £75 per person, which is based on the following calculation:

3 hours of Care Purchasing Coordinator time at £16.20 per hour (including on-costs):	£48.60
Overheads, management and collection costs:	+£26.40
<b>Total</b>	<b>£75.00</b>

Based on the example above, the Council would spend around 60 hours of staff time making alternative care arrangements. It would receive £750 in administration fees from the people who were paying for their own care and support, and £225 from a neighbouring local authority.

- 4.2.7 The Committee is asked to approve the inclusion of the charging mechanism in the Market shaping and provider failure policy statement.

### **4.3 Financial assessments and charges**

- 4.3.1 The current legal framework enables local authorities to financially assess people with eligible care and support needs, and to request a contribution towards service costs where someone has sufficient financial resource. The principle being that people should pay only what they can reasonably pay towards their care. From April 2015, the legal framework is replaced by the Care Act, but this overarching principle remains.
- 4.3.2 The Financial Assessment and Charges Policy Statement provides an overview of existing financial policy, outlining when and how a financial assessment will be undertaken, and summarises the existing contributions policy, with two minor modifications.
- 4.3.3 Building on the Care Act guidance issued in late October 2014, this policy statement contains two minor amendments to the existing contributions policy. These are;
- to apply charges from the start of a service, rather than the date the financial assessment is completed

- ii. to apply an administration fee when arranging care for self-funders

The proposed amendments are in keeping with the new duties established in the Act. The underlying principle in both cases is to minimise the costs incurred by the local tax payer when exercising these duties.

- 4.3.4 The Contributions Policy would be updated to reflect these changes if the Policy Statement is agreed in March.

#### **4.4 Deferred payments**

- 4.4.1 A deferred payment agreement is a financial arrangement between the Council and someone who requires permanent residential or nursing care who has been deemed liable to pay the full costs of their care. Under the terms of the agreement, the Council meets the care costs and places a charge on the property which is repaid when the property is sold, either in the person's lifetime, or on settlement of the person's estate. The deferred payment scheme supports the stated government objective that no one should be forced to sell their home in their lifetime to pay for their care. The Act expands and clarifies the duty to offer deferred payments to individuals, and allows Councils to recover costs incurred in administering the scheme. The guiding principle underpinning this policy is that the scheme should be cost neutral to the Council.
- 4.4.2 This policy statement is a revision of the existing deferred payment scheme to ensure that it is compliant with the Act, and can be scaled up if demand for deferred payments increases. It provides clear guidance to the public and staff explaining how the scheme works and under what circumstances it would be applicable.
- 4.4.3 Building on the guidance issued in late October 2014, this policy statement outlines the circumstances when a deferred payment might be available, and the charges that would be incurred by the recipient. These are;
  - i. an independent property / asset valuation. This is estimated to be around £600 per valuation
  - ii. an interest rate charge. This interest charge should reflect the cost of borrowing incurred by the Council. The guidance allows the Council to charge up to a maximum national rate, which is reviewed every six months. This is currently set at 3.25% although it may change over time. The requirement to amend interest rates in line with the national rate would be incorporated into the deferred payment agreement.
- 4.4.4 The Committee is asked to approve the inclusion of the charging statement in the Deferred Payment policy.

#### **4.5 Support planning**

- 4.5.1 Care and support planning and the use of personal budgets, although very important to the way care and support is given, is not currently a legal requirement, although it is underpinned by national and local

best practice guidance. The Act changes this by articulating a local authority duty for the provision of a care and support plan, and a legal entitlement to personal budgets.

- 4.5.2 This policy statement reflects the national guidance and reinforces existing practice, emphasising the 'personalisation agenda' which gives the person a greater role in identifying their care and support needs and how those needs will be met. This is already well established within Cambridgeshire. It confirms that the process for identifying the personal budget allocation to meet a person's care and support needs should be transparent so the person or carer can understand how the amount has been calculated.
- 4.5.3 The statement confirms the requirement to ensure that the support planning process is person-centred, agreeing the plan with the person who has been assessed. Importantly, it references themes covered in other policy statements (such as wellbeing, prevention and information and advice) and it emphasises the need to take account of how universal services and community based and/or unpaid support could contribute towards the plan. The policy statement clarifies how the Council will ensure that resources are used in the most efficient and effective way possible. For example:
- i. using assistive technology equipment to alert sleeping carers rather than employing more expensive waking night staff
  - ii. clarifying when it is appropriate for the Council resources to pay for leisure activities rather than the person using their own money;
  - iii. clarifying when a single housing and support arrangement would be supported by the Council rather than a more cost effective shared housing arrangement.
- 4.5.4 The policy embeds the option of Direct Payments within the support planning process.
- 4.5.5 The Committee is asked to approve the inclusion of the statement in the policy emphasising that the Council has a duty to meet needs rather than provide specific services and so will develop and review flexible support plans for each person which are tailored to their circumstances, needs and latest best practice and technology. As a consequence the policy recognises that the way individuals are supported may significantly change over time as needs change, as new technologies become available and as new approaches to meeting need are developed.

## **5.0 MINOR POLICY AMENDMENTS**

- 5.1 The Act introduces new duties and consolidates existing policy which is reflected in the following policy statements:

### **5.2 General responsibility to promote wellbeing**

- 5.2.1 This policy statement introduces the new duty to promote wellbeing

generally, and specifically for people who present with care and support needs, whether or not these needs meet the eligibility criteria. The promotion of an individual's wellbeing underpins the entire Act, and supports all of the new policy statements contained in the framework, specifically those referenced in sections 5.3 and 5.4 of this paper. It supports the prevention agenda and is reflected in the Council's new model for social work and social care, Transforming Lives.

### **5.3 General responsibility to prevent, delay or reduce the need for care and support**

- 5.3.1 This policy statement reinforces existing practice, emphasising the importance of the preventative agenda, which is already well established in Cambridgeshire through services such as re-ablement and the provision of occupational therapy and assistive telecare equipment. This policy will also underpin the Council's new model for social work and social care, Transforming Lives.

### **5.4 General responsibility to provide information and advice**

- 5.4.1 This policy statement reinforces existing practice, emphasising the importance and commitment to the provision of good quality information and advice and signposting people to activities and support networks in the community and voluntary sector. The Information and Advice project will expand the breadth of information available through the inclusion of information and support provided by health partners, voluntary organisations and community groups. This policy also underpins the Council's new model for social work and social care, Transforming Lives.

### **5.5 Integration, co-operation and partnerships**

- 5.5.1 This policy statement reinforces existing practice, emphasising the existing commitment to work with partner agencies and organisations to deliver integrated ways of working for the benefit of the individual receiving support. This policy reflects the Principles of Integrated Working that was recently endorsed by the Committee, and underpins the working arrangements established via the Cambridgeshire Executive Partnership Board, the Better Care Fund, and the recently approved Older People Strategy.

### **5.6 Adult safeguarding**

- 5.6.1 This policy statement reinforces existing practice, emphasising the existing duty to safeguard vulnerable adults and older people from the risk of abuse and neglect. It provides a legal framework for the existing Safeguarding Adults Board, promotes the use of information sharing agreements to allow greater cooperation between partner organisations, and endorses the Making Safeguarding Personal model, which places the individual concerned at the heart of the safeguarding process.

### **5.7 Assessments of care and support needs**



- 5.7.1 This policy statement reinforces existing practice, emphasising the duty to assess the need for care and support. It explains the national eligibility criteria and how it will be applied consistently across Cambridgeshire, and emphasises that the Council has a duty to meet need rather than to provide specific service(s) – meaning the way care is provided may change over time. It references themes covered in other policy statements (such as wellbeing, prevention and information and advice) and how the assessment process will take into account a person's strengths sometimes referred to as a "strengths based approach".
- 5.7.2 The statement explains the importance of ensuring that assessments are appropriate and proportionate to the circumstances of the person. For example, where a person's needs are easily recognisable, an assessment may be carried out by telephone or where the person may lack capacity to make decisions regarding their care and support needs, the assessment must be face-to-face.
- 5.7.3 It also describes how we will provide a 'whole family approach' to assessment so that the person needing care and support is considered within their family context, and how carers needs are also be taken into account through an assessment to determine eligibility for support.

## **5.8 Advocacy**

- 5.8.1 The Act reinforces the principle that the person should be at the heart of the assessment process. It also confirms that carers must also be involved as well as anyone else that the person requests to be involved in the process. This policy statement sets out these principles, and establishes a new duty for the Council to find independent and appropriate support to represent the person in the event that they will have significant difficulty in participating in the assessment process. If there is no one appropriate to undertake this role the Council must appoint an independent advocate.

## **5.9 Direct Payments**

- 5.9.1 This policy statement reinforces existing practice, emphasising the importance of Direct Payments and offers direction on key issues. including:
- i. Direct Payments for people with capacity
  - ii. Direct Payments for people without capacity
  - iii. Clarification on who can be paid to provide care and support with a Direct Payment
  - iv. Circumstances when an enhanced criminal record certificate is required by someone providing care paid for with a Direct Payment
  - v. Monitoring checks to include evidence of expenditure

### **5.10 Ordinary Residence rules**

- 5.10.1 This policy statement reinforces existing practice, emphasising the principles to be applied in establishing which local authority is the responsible body for care provision.

### **5.11 Continuity of care**

- 5.11.1 This policy clarifies the Council's responsibilities when a person receiving care and support moves from one local authority area to another.

### **5.12 Transitions from children to adult services**

- 5.12.1 This policy reinforces existing practice, clarifies the circumstances when a transition assessment must be carried out in order to facilitate the transfer of a case between children and adult services, the importance of ensuring the continuity of care across the transition period, and cooperation with other agencies and partners. It also contains explicit policy statements around young carers and links to other policy statements (such as safeguarding).

### **5.13 Prisoners**

- 5.13.1 This policy statement introduces the new duty to ensure that prisoners have the same basic right to an assessment of need for care and support, and for any eligible needs to be met via the Council. It also outlines where the support mechanisms will differ from other service users, for example direct payments will not be available to prisoners.

## **6.0 ALIGNMENT WITH CORPORATE PRIORITIES**

### **6.1 Developing the local economy for the benefit of all**

- 6.1.1 The Act requires the Council to shape and manage the market and our local programmes including Transforming Lives and Support for Carers will have the potential to further develop the social care market locally and through that develop the local economy.

### **6.2 Helping people live healthy and independent lives**

- 6.2.1 The Act reinforces this Council priority and the work that we are undertaking to deliver the Act including Transforming Lives and Support for Carers focus on people living healthy and independent lives.

### **6.3 Supporting and protecting vulnerable people**

- 6.3.1 The Act and the work to implement the requirements of the Act will support and protect vulnerable people by ensuring that people, including people who are caring for a relative or friend, are assessed and where they have eligible needs, the Council will identify a personal budget or individual budget to meet their needs, and provide

support to arrange to meet those needs if required.

## **7.0 SIGNIFICANT IMPLICATIONS**

### **7.1 Resource Implications**

- 7.1.1 The report presented to the Adults Committee in September set out the aspects of the Act that are expected to have resource implications and the modelling work undertaken using the Lincolnshire tool suggests that there is sufficient resource to support the implementation in 2015/16. The allocations from the Department of Health to support the implementation of the Bill, set out below.
- 7.1.2 The Better Care Fund (BCF) includes an allocation of £130m revenue and £50m capital nationally (approximately £1.3m revenue and £0.5m capital locally) and a further £335m nationally (approximately £3.2m locally) has been identified in Local Authority allocations for "new burdens". The work of the Care Act Programme Board will determine exactly how to deploy this funding to deliver on the requirements of the Act. The close alignment of our intentions within the BCF and the Act means that other expenditure from the BCF will also contribute to delivering the requirements of the Act, in particular preventative activities and assessment and crisis intervention. **N.B.** The Better Care Fund is the transfer of £38m locally from the NHS into a pooled budget with the Council, but it should be noted that this is not new money it is already within the CCG funding allocation.
- 7.1.3 However, current opinion of the Local Government Association and the Association of Directors of Adult Social Services is that the allocations are not sufficient to address the longer term requirements of the Act. The Care and Support Reform Programme led by the Department of Health includes a work stream, Paying for the Reforms that is reviewing the costs of implementing the requirements of the Act and the affordability risk to Local Authorities to inform resource allocation methodologies and decisions in the next Comprehensive Spending Review. Early work by a few Local Authorities, which indicated that the cost pressures could be up to 23% higher than the Department of Health has estimated, is likely to be moderated by the modelling work that Local Authorities are currently undertaking.

### **8.2 Statutory, Risk and Legal Implications**

- 8.2.1 The Act introduces new legislation and statutory responsibilities that all relevant staff will need to understand and operate within. Briefings and training and the development of a number of 'Care Act experts' will be necessary so that The Council is not exposed to challenge through non-compliance with the Act. This will be addressed through the Care Act Programme.

### **8.3 Equality and Diversity Implications**

- 8.3.1 The current and future requirements on the Council in respect of delivering adult social care require us to take account of each person's individual needs including issues relating to equality and diversity. The Council will continue to actively promote best practice

in this respect through staff training, supervision and the programme set up to deliver the requirements of the Act. A Community Impact Assessment has been completed, and is available as Appendix 2

#### **8.4 Engagement and Consultation Implications**

- 8.4.1 The Care Act Programme Board will be developing a communication and engagement strategy to ensure that service users, carers and the wider community are involved in the work to respond to the requirements of the Act. Projects that are already underway, for example Transforming Lives, are developing communication and engagement strategies and these will be overseen by the Communications and Information work stream within the Care Act Programme.

#### **8.5 Public Health Implications**

- 8.5.1 The new responsibility for wellbeing and prevention resonates with the public health agenda and adult social care will work collaboratively with public health colleagues to ensure that these new responsibilities for adult social care are fulfilled in the most efficient and effective way possible

#### **8.6 Localism and Local Member Involvement**

- 8.6.2 The Council's approach to implementing the Care Act, through the Transforming Lives model has a strong focus on local communities and Members have a key role to play in supporting the development of resilient communities.

<b>Source Documents</b>	<b>Location</b>
<b>The Care Act 2014 legislation</b>	<a href="http://www.legislation.gov.uk/ukpga/2014/23/contents/enacted">http://www.legislation.gov.uk/ukpga/2014/23/contents/enacted</a>
<b>The Care Act 2014 statutory guidance</b>	<a href="https://www.gov.uk/government/publications/care-act-2014-statutory-guidance-for-implementation">https://www.gov.uk/government/publications/care-act-2014-statutory-guidance-for-implementation</a>
<b>The Adult Social Care Policy Framework</b>	On request from: Andy Mailer, Strategy Manager, CFA 01223 715 699 <a href="mailto:Andrew.mailer@cambridgeshire.gov.uk">Andrew.mailer@cambridgeshire.gov.uk</a>