

CARE ACT 2014 DRAFT POLICY FRAMEWORK

To: **Adults Committee**

Meeting Date: **26th March 2015**

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

Electoral division(s): **All**

Forward Plan ref: **N/A** *Key decision:* **No**

Purpose: **The paper sets out the final 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 from 1st April 2015.**

Recommendation: **The Committee is asked to**

- a) Note the consultation feedback received and revisions made to the draft policy framework; and**
- b) Agree the policy framework for implementation from the 1st April 2015**

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1.0 BACKGROUND

- 1.1 Part 1 of the Care Act 2014 (the “Act”) 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. The consultation on the draft regulations and guidance for the Act closed on 15 August 2014 and the final regulations and guidance were published in late October 2014. Although the Act builds on existing areas of policy and practice, implementation and achieving compliance by 1st April 2015 is a major undertaking. This work is being managed through the Care Act Programme Board.

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 developed a draft policy framework designed to 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 draft policy framework was presented to Committee on 6th January 2015 for review and comment. The Committee gave agreement to a 30 day consultation which would focus on the areas of the Act that gave local authorities the discretion to determine policy locally. These are;

- Provider failure
- Financial assessment and charging
- Deferred payments
- Support planning

Feedback was also sought on the “what does it mean for me?” sections found at the end of each policy statement, and the policy framework as a whole.

- 2.2 The consultation went live on the 27th January. Following early constructive feedback from Cambridgeshire Alliance (a user-led organisation supporting people with disabilities), the introduction and covering statements included in the consultation were simplified and large print and easy read versions produced and published to facilitate service user engagement. The consultation deadline was also extended by seven days to the 27th February.
- 2.3 The draft policy framework has been reviewed and updated in light of feedback received from the consultation and following a review by Legal Services. The revised draft framework can be found in appendix 1(which includes a full list of revisions on page two). An updated community impact assessment can be found in appendix 2.

A copy of the consultation questionnaire can be found in appendix 3 and the full set of consultation results are detailed in appendix 4.

3.0 CONSULTATION RESPONSE RATES

- 3.1 The response rate was low. In total 27 responses were received. Of these 18 printed easy read responses were received and 9 responses were made on-line. A relatively high percentage of responses were “don’t know” – especially on those questions that had financial implications such as the sections on “financial assessments and charging” and “deferred payments”. This highlights the importance of clear communication around the Act, both in terms of policy and, more generally, public awareness and understanding.
- 3.2 Twenty three responses were submitted by individuals, 18 identified themselves as service users, two as carers, two as professionals who work in health and social care and one for an organisation that supports carers. Four responses were submitted on behalf of local organisations - three voluntary and one care provider.
- 3.3 A summary of the key feedback is detailed in the following sections.

4.0 PROVIDER FAILURE CONSULTATION RESPONSES

- 4.1 The first section of the consultation focussed on one of the new duties established under the Act. 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

Although provider failure is rare, it does occur, as was seen in the failure of the Southern Cross care homes in 2011. Should provider failure lead to a temporary or permanent service interruption, the Act requires local authorities to minimise the disruption to the people receiving care, regardless of whether the care has been arranged and is paid for by the Council, or privately by someone who funds the care themselves.

- 4.2 Twenty two respondents (82%) agreed that people who funded 100% of their care costs should be able to ask local authorities for help in arranging alternative care in the event of provider failure occurring. Nine respondents (33%) supported the proposal that the Council should charge for this service to ensure there was no cost to the local tax payer but 13 respondents (48%) strongly disagreed with this approach, stating that this duty should be funded by the Council.
- 4.3 Three comments were received. A full list can be found on page 3 of

appendix 4. Highlights from the most relevant were:

- it must be clear that costs would be kept to a minimum and comparable / better accommodation would need to be offered, and
- the Council's policy makes care and administration charges clear

4.4 There is no central government funding for this new duty and given the extent of the budgetary pressures the Council is facing, committee is therefore recommended to retain the option to charge an administration fee if asked to arrange alternative care as a result of provider failure for people who fund their own care. The draft policy has been updated to reflect feedback received to emphasise that the costs would be kept to a minimum and the Council would not be generating a profit from this service.

5.0 FINANCIAL ASSESSMENT CONSULTATION RESPONSES

5.1 The second section of the consultation focussed on financial assessments. 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. Building on the Care Act guidance issued in late October 2014, the Financial Assessment policy statement contained two minor amendments to the existing contributions policy. These were;

- i. 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 consultation focussed on these two areas.

5.2 Thirteen respondents (48%) supported the proposal to apply appropriate charges from the point at which care was delivered, rather than from the date the financial assessment was completed. Three respondents (11%) strongly disagreed, while 11 (41%) didn't know / were unsure how to respond.

5.3 Eight respondents (29%) supported the proposal to charge an administration fee to those who have been assessed as being able to afford to pay 100% of their care costs, while 16 respondents (56%) disagreed with the proposal.

5.4 Four comments were received. A full list can be found on page 4 of appendix 4. Highlights from the most relevant were:

- Budgets are [a] constraint, resources are finite and users have to understand this and accept a level of responsibility

- I think you should charge, but it should be a reasonable amount
- Any admin fee would have to be minimal – under £100
- Arranging care carries a cost, whether undertaken by the Council or a third party. Costs should be transparent, proportionate and competitive and not levied if the Council is not asked to arrange care. The policy is clear about this and professionals would have to explain it.

5.5 Following clarification from Legal Services, the option to charge an administration fee to people who have been financially assessed as able to fund 100% of their care costs will only apply when arranging care at home. The policy framework has been updated accordingly.

5.6 The majority of consultation responses were against the proposal to introduce an administration fee chargeable when arranging care for self-funders, although the comments received, as summarised in paragraph 5.4, were broadly supportive. Given the low response rate, it is difficult to draw many conclusions from these results. However, in recognition of the Council's budgetary pressures, the Committee is recommended to retain the option to charge an administration fee when arranging care for people at home who have been financially assessed as able to fund 100% of their care costs. The draft policy has been updated to reflect feedback received to emphasise that the costs would be kept to a minimum and the Council would not be generating a profit from this service.

6.0 DEFERRED PAYMENTS CONSULTATION RESPONSES

6.1 The third section of the consultation focussed on the Council's Deferred Payments scheme. 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 person's 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.

6.2 The consultation focussed on the guiding principle underpinning the draft policy in that the scheme should be cost neutral to the Council. This would involve re-charging any administration fees (such as property valuations) as well as applying interest charges that would reflect the cost of borrowing incurred by the Council. National guidance enables 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.

- 6.3 Five respondents (18%) supported the proposal that the scheme should be cost neutral to the local authority. The same number of respondents also disagreed with the proposal. The majority (17 respondents equating to 63%) didn't know / were unsure how to respond.
- 6.4 Three comments were received. A full list can be found on page 5 of appendix 4. Highlights from the most relevant were:
- I think the admin fee should be the same as in the previous scenario
 - [This] must not be a mandate for the council to pay itself at a rate it decides
- 6.5 In order to ensure affordability, it is recommended that committee agree to the principle set out in the draft policy that the scheme is cost neutral to the local authority.

7.0 SUPPORT PLANNING CONSULTATION RESPONSES

- 7.1 The forth section of the consultation focussed on the draft support planning policy. Care and support planning and the use of personal budgets, although very important to the way care and support is given, are 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.
- 7.2 The draft 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 emphasises 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 that are tailored to circumstances and needs and referencing latest best practice and technology. The policy statement clarifies how the Council will ensure that resources are used in the most efficient and effective way possible. For example:
- using assistive technology equipment to alert sleeping carers rather than employing more expensive waking night staff
 - clarifying when it is appropriate for the Council resources to pay for leisure activities rather than the person using their own money
 - clarifying when a single housing and support arrangement would be supported by the Council rather than a more cost effective shared housing arrangement.
- 7.3 Nine respondents (33%) agreed that the Council should maximise the use of assistive technology, particularly for care and support overnight. 12 respondents (44%) disagreed.

- 7.4 Nine respondents (33%) agreed that the Council should make the distinction between the Council's duty to "reduce and prevent social isolation" and "leisure activities that the person pays for themselves". The example provided in the consultation document involved the utilisation of day centres to reduce isolation, rather than the Council funding an evening swimming class. This would equally apply to the funding for other evening activities such as 10-pin bowling and trips to the cinema. Twelve respondents (44%) disagreed with this proposal.
- 7.5 Sixteen respondents (59%) agreed that the Council should only consider single housing and support arrangements where shared housing would not meet the person's specific needs. Four respondents (14%) disagreed with this proposal.
- 7.6 Four comments were received. A full list can be found on page 7 of appendix 4. Highlights from the most relevant were:
- Shared housing has its benefits for some but not all – this needs careful assessment in order to improve the life of an individual
 - Assistive technology – so long as there is a cost-benefit without introducing adverse levels of risk
 - It is difficult to comment here on social isolation and a leisure activity that promotes physical and mental wellbeing such as swimming
 - The policy relies on good support planning and agreement to joint assessments where appropriate – this will be a challenge to the Council
- 7.7 In light of the feedback received via the consultation, the policy has been revised to emphasise the use of risk assessments in determining how best a person's needs can be met, whilst stressing the importance of ensuring Council resources are used in the most efficient and effective way possible. It is recommended that the committee agree to the draft policy statement which will enable the Council to develop and review flexible support plans for each person.

8.0 GENERAL CONSULTATION FEEDBACK

- 8.1 Six respondents (22%) agreed that the "what does it mean for me?" section contained in each policy statement was useful. 12 respondents (44%) disagreed, with the remaining 9 (34%) did not know or had not read the statements.
- 8.2 Four comments were received. A full list can be found on page 8 of appendix 4. Highlights from the most relevant were:
- Enabled me to review during the survey so I felt confident to answer the questions
 - I think it needs to be more specific and give clearer examples
 - It was helpful to see the sections split into person with care needs / carer / professional

In light of the above, these sections will continue to be reviewed and

updated as examples of good practice are identified post implementation.

- 8.3 Fifteen comments were received on the policy framework as a whole. A full list can be found on pages 8 and 9 of appendix 4. One voluntary organisation commented that the “policy framework was straightforward” however 14 service users responded via the easy read survey that they could not understand the document. Following Committee approval of the policy framework, work will begin on developing an easy-read version for service users. The individual statements will be published via the County Council website which can be used by advocates to support people through the assessment and safeguarding processes, and used more generally by carers, family members as well as staff and partner organisations. Hard copies of the policy statements will also be available on request.

9.0 LEGAL UPDATES AND OTHER REVISIONS

- 9.1 Following feedback from Legal Services and service leads, a number of minor corrections and amendments were made to the draft policy framework following the committee meeting held on the 6th January 2015. A full list is detailed on page 2 of the Policy Framework (appendix 1). The most notable are:

- policy review statements were added to all sections, which will ensure the policy is regularly reviewed, at a minimum on an annual basis
- equalities statements were added to all sections, committing compliance with the Equality Act 2010
- links to the final national Care Act regulations were added to all sections
- an explanation of the Council’s duties to undertake safeguarding enquiries was added to the safeguarding policy

- 9.2 The Committee is asked to note these updates.

10.0 ALIGNMENT WITH CORPORATE PRIORITIES

10.1 Developing the local economy for the benefit of all

- 10.1.1 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.

10.2 Helping people live healthy and independent lives

- 10.2.1 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.

10.3 Supporting and protecting vulnerable people

- 10.3.1 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.

11.0 SIGNIFICANT IMPLICATIONS

11.1 Resource Implications

- 11.1.1 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.
- 11.1.2 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.
- 11.1.3 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.

12.2 Statutory, Risk and Legal Implications

- 12.2.1 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.

12.3 Equality and Diversity Implications

- 12.3.1 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

12.4 Engagement and Consultation Implications

- 12.4.1 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.

12.5 Public Health Implications

- 12.5.1 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

12.6 Localism and Local Member Involvement

- 12.6.2 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.

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